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**GOVERNMENT OF BRITAIN**  
**THE COMMONWEALTH COUNTRIES AND**  
**THE DEPENDENCIES**

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## PREFACE

THERE is ample evidence of the growing interest in political questions and of a consciousness of the ever-increasing part played by the State in modern life. This book will help to satisfy the demand for knowledge of our political system and institutions.

It has been said that the subject of government must be treated from either the historical or the practical angle. But British government is so bound up with history that it is not possible to omit historical development without becoming unintelligible. On the other hand, it is true that the distant past can be so over-emphasised that it might seem as if "old unhappy far-off things" are alone vital to the citizen's understanding of his rights and duties.

Both continuity and change are characteristic of the British Constitution. To keep a just balance between the old and the new is essential as a safeguard against the two fallacies that "whatever is, is right," and "whatever is, is wrong."

Description of institutions, both at home and in the other parts of the Commonwealth, necessarily predominates in a book of this kind. For University examinations on the British Constitution, the basic need is to know what the principal institutions of Britain are, what relation they bear to one another, and what work is done by each. The beginning of understanding is in the facts.

But this is only the beginning. Criticism of existing institutions, and consideration of proposals for reform are complementary to a study of the political framework. Some indications are, therefore, given in this book of the controversies which make the study of constitutional problems so full of vital interest.

The authors believe in the broad principles which underlie the working of the democratic State. They believe, therefore, that controversial problems should not be solved from above, but by citizens seeking the common good in their own way. In a final analysis, the decision about the good life is a matter for individual choice.

If democracy is to flourish in a world threatened by authoritarianism, citizens need to be aware of how they can make their desires known and their will effective. This book is a contribution to the cause of democracy in the sense that it is concerned with the machinery of government, and that it lays stress on the opportunities at the citizen's disposal to make his influence felt in the counsels of his country and of the world.

For the Eighth Edition the text has been carefully revised throughout, and much new material has been incorporated on the Commonwealth.

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# GOVERNMENT OF BRITAIN THE COMMONWEALTH COUNTRIES AND THE DEPENDENCIES

## CHAPTER I

### THE STATE

#### **Definition of the State**

The State is the fundamental political unit in the modern world. Its authority extends over a clearly defined area. Within that area the State claims supremacy, and the inhabitants are expected to obey its laws, which are the expression of the will of the State. Whatever associations citizens form among themselves, the primary loyalty of the citizen holds good: his first duty is to carry out his legal obligations to the State. He may claim that his conscience points in an opposite direction, but this will not excuse him in law, though he may sometimes be justified by a code of morals superior to the law itself. The State tolerates no claims of associations disputing State-prescribed rules.

A second characteristic of the State is its assertion of independence against outsiders. A powerful neighbour on the doorstep may influence the policy of a Government, but the Government ceases to be the executive arm of the State as soon as the claim to independence is abandoned. The precise point at which independence is sufficiently lost to warrant the view that a State has vanished below the surface is occasionally difficult to determine, but the recognition of its independence by other States is a useful test when the issue is in doubt. For the most part, however, it is comparatively

easy to identify those communities of the present day entitled to be called States.

A difficulty arises over the use of the word "State" in such expressions as "the United States of America." As a result of successful revolt against the British Government, the American colonies achieved independence during the period 1775-83, and they did so by forming an alliance among themselves which was very much a war-time expedient. The sense of independence in each colony was very strong and was emphasised by declaring the union to be one of States. For a long time the right of an individual State to secede from the Union was asserted, and it was not until after the Civil War of 1861-65 that the claim to secede was effectively quashed. But the word "State," when not used in a special context such as this, implies that a claim has been staked, and reasonably substantiated, to supremacy in internal affairs and independence in external relations.

The United Kingdom of Great Britain and Northern Ireland, together with its dependencies, is an example of a State in the usually-accepted sense of the word. Historically the United Kingdom arose as a union of communities, each with a claim to Statehood before the union became effective. The separate American colonies were united with a similar result. A single State was created, and though the phrase "United States of America" was adopted as a concession to the claims of each colony to manage its own affairs, the word "States" in the title came to have a more and more remote connection with all that is implied in Statehood. A recent example of union of communities is the Union of Soviet Socialist Republics, created in 1917. Here the word "Republic" suggests Statehood, but in fact the constituent members have few of the characteristics of a State; and the word is more properly applied to the Union as a whole.

### **The Elements of Citizenship**

Broadly, modern States are of two types: democratic and authoritarian. Unfortunately, the word "democracy" has been used so variously that it is difficult to find a generally acceptable definition. Both Hitler and Stalin have at times been

called democrats, but they do not come within the usual definition of the word as it is understood in Western Europe and the U.S.A. Democracy may perhaps be defined as that form of representative government in which: (1) adults are regularly asked to vote on major issues; and (2) there is a genuine opposition in existence to implement an alternative policy, if the policy of the existing government becomes no longer acceptable to the nation. In authoritarian States, sometimes called dictatorships, there may be votes on major issues, but there is no opposition party in existence to form a new government when the need arises. Moreover, there is a rigid control of news and opinions, so that any opposition party which might arise would have no prospect of being able to come into the open against the party in power. Reasonable freedom of expression is, however, basic to democracy, which is certain to wither away in the absence of an opportunity for critics to put their point of view in the same way as the party in power can put theirs.

Citizenship in a democratic State involves both duties and privileges. Duties are multitudinous, and in the event of non-observance, it is no adequate defence to plead ignorance. It is therefore an essential part of citizenship to become acquainted with these duties. If democracy is to be more than an empty form, it is also necessary to become acquainted with the various ways by which political power can be exercised. To enjoy the fruits of a democratic State the citizen must find out what he is entitled to get and insist on his rights.

Many offences are recognised by all reasonable people as being morally wrong, for example crimes such as murder and theft, but temporary emergencies call for temporary remedies, and may lead to the creation of new offences which do not run counter to the ordinary standards of human behaviour. Before 1939 there were Government campaigns to buy more milk, but the stringencies of war and of post-war conditions led to a scheme of rationing under which the purchase of milk beyond a fixed limit was a punishable offence. Before 1939, offences were as a rule sins of commission. A much higher proportion after that date became sins of omission. To a considerable extent "Do" replaced "Don't" in the

Government vocabulary. Registration for service in the Armed Forces is a striking example. Voluntary recruitment was the accepted British way of organising defence, until critical times in 1939 led to a change. Post-war commitments prevented a decision to return to the voluntary system until 1957.

Democracy involves the constant play of the citizen's ideas on the Government of the day. The process is not merely a matter of registering a vote on polling days at irregular intervals. If this were the mainspring of public control, it would be quite inadequate for the purpose. Individually, and through a variety of organisations, the citizen can exert his influence in other ways as well. He can approach his M.P. directly, and he can join with others to make his views known. Action can be taken through a large variety of organised bodies such as Trade Unions, Employers' Associations, Chambers of Commerce, Co-operative Societies, the British Legion, and Women's Institutes. In addition, there is, for many people, an opportunity of serving on statutory bodies, national and local.

Finally, there is the question of ascertaining the extent of the citizen's privileges. Machinery exists which he may use when he is in need as a result of sickness, accident, unemployment, or old age. A good citizen will not shirk his duties, and a wise citizen will not abstain from accepting his dues.

### **Purposes of the State**

Cicero said that laws were made for the citizens' safety and for the preservation of the State. This covers two of the most necessary purposes for which State action is required. The safety of the citizen includes protection for his person and his property. "Order is Heaven's First Law," as Pope justly observed; and it is plain that no form of society is satisfactory where the individual is in constant danger from enemies. Moreover the State as a whole must be defended against revolutionaries. In this connection, law should hold a balance between internal and external needs. A threat to the community from inside or from outside may involve a sacrifice of individual liberty in the interest of the

whole, but when the threat is over, the protection of the individual may once again become the paramount purpose.

This raises two further questions: how far the State should go in providing internal security; and the extent to which the State ought to go in making the community safe in the world at large.

The State is no longer considered merely as a police organisation. Nowadays the safety of the citizen is interpreted very widely. He needs to be protected against wrongs done him by other citizens, and against minorities whose anti-social behaviour is a menace to life and property. Also, the complexity of modern life necessitates regulations, *e.g.* to ensure pure food and to guard against the improper use of dangerous drugs. But no citizen can be called "secure" if the cloud of unemployment is heavy upon him and if the loss of his health would reduce him to starvation. Voluntary agencies have paved the way for State action in regard to these problems. Recent years have produced a vast quantity of legislation concerned with social welfare. Has the pace been too rapid? There is little doubt that State schemes provide the most equitable and the most economical way of coping with social problems. But they need to be accompanied by a corresponding stress on the need for hard and regular work. The State is no fairy godmother, with gifts derived magically from a store that can never fail.

The State is also concerned with defence against external enemies. The physical resources thus applied go into a bottomless pit: for there is no chance of getting any appreciable part of the resources back. The true position is obscured by such devices as the issue of defence loans. The State pays for military equipment, in part at any rate, by issuing documents entitling holders to payments which impose a burden on the producers in the community. But while it is important to know that defence measures are a drain on the community, it is equally important to stress the need for adequate forces. In an insecure world, the purpose of the State is to give reasonable protection against invasion, and to maintain as far as possible the interests of the community abroad.



### **Legislature, Executive, and Judiciary**

Every association finds it necessary to make rules to promote the objects of the association. In the case of the State, these rules form the law of the land. Making the law is the function of the legislature; applying the law is the function of the executive; and enforcing the law against offenders is the function of the judiciary.

The allocation of functions in this tripartite division seems easy to establish, but in practice the boundaries between them are exceedingly blurred. Law-making is a primary task of Parliament, but both executive and judiciary take a hand as well. Departments of State may be authorised to fill in the details of Acts of Parliament, and in this way lay down numerous rules which have the force of law. Judges, by making decisions in cases which have a flavour of novelty about them, create law just as surely as do State Departments. "Test" cases lead to pronouncements, which may claim to be based on existing law, but which often define new rules.

Executive functions expand rapidly in importance. But they are not confined to the executive proper, national or local. In granting probate, by which executors of wills are authorised to administer estates, the High Court performs what is more of an executive than a judicial function; and Justices of the Peace, in Licensing Sessions, by granting or withholding licences to sell intoxicating liquor, enter the field of executive activity. Parliament has little to do that can be called executive, but elected M.P.s and members of the peerage may hold Ministerial posts and have to give an account of their stewardship to Parliament.

In the judicial sphere, there are also competing authorities. Parliament is itself a High Court—the House of Commons having a limited jurisdiction within its own sphere; and the House of Lords having a parallel jurisdiction, and also acting as a court of appeal. The growth of judicial functions exercised by the executive has excited the wrath of eminent lawyers, and there is no doubt that grave abuses are possible when the executive is both judge and litigant. But it is hard to see how the executive could do its job unless speedy settlements of dispute were possible without resort to the ordinary courts.

Officials carrying out difficult tasks in the Welfare State, would be unduly hampered if they were in constant fear of actions in the courts of law. The courts do, however, in one way or another, provide opportunities for dealing with a very large number of disputes between citizens and officials. If the volume was much larger, the delay in, and weakening of, executive action would tend to paralyse the arm of the Government.

### **Constitutional Law and Practice**

The constitution comprises all the rules determining the formation, powers, and relations of the various bodies concerned with the government of the State.

The French commentator, De Tocqueville, asserted that the British Constitution did not exist. By this he meant that there was no written document setting out clearly the way in which the more important institutions of the country were related to each other, how they were created, and what powers they could exercise. In many countries, there is such a document. It is regarded, to use Cromwell's phrase, as a "somewhat fundamental" something above and beyond an ordinary legislative act. In France a number of constitutions have at different times been created, each concerned with defining the liberties of the subject in terms of the prevailing ideology of the day; and in the U.S.A. there has been only one constitution—amended at times, but in fundamentals hardly changed. This defines precisely the powers and relations of legislature, executive, and judiciary, and is accepted as the political Bible of the citizen. Britain, on the other hand, has a vague constitution which is compounded of many elements. As Herbert Morrison (now Lord Morrison of Lambeth) once said: "One of the charms of the British Constitution is that there are a lot of things about it which one cannot explain."

Using the phrase in the strictest sense, Constitutional Law, which may be embodied in statutes or may be derived from other sources, consists of all those rules of the constitution which can be enforced in the ordinary courts. Many rules are quite obviously within the category of fundamental law, such as the rule that the House of Lords cannot prevent or

delay the enactment of a Money Bill, and cannot, under the Parliament Act, 1949, delay beyond the space of one year the progress of any Public Bill which has the approval of the Commons. Other rules are less obviously fundamental and give rise to discussion as to whether they can properly be regarded as constitutional law. Thus the Gold Standard (Amendment) Act, 1931, was primarily economic in its effects; but limited financial powers were conferred on the executive, so giving the Act some constitutional significance.

Outside the scope of law proper, there are constitutional practices or conventions which are almost invariably followed, but which could not be enforced in the ordinary courts. It is, for example, a constitutional practice that a Minister of the Crown supports the policy of other Ministers, whatever he may privately think about the matter. But if he criticised any colleague's work, he could not be convicted in an ordinary court of law. Conventions of this kind have developed slowly in the evolution of our political system. They have gradually hardened until they have become almost unbreakable. But, while the hardening process is still going on with regard to some conventions, others undergo a softening process. For example, it is generally accepted that Government back-benchers should support the Government on principal issues in the House of Commons. But revolts on many occasions testify to the comparative weakness of this convention, though it holds good as a rule as a result of party solidarity.

### **The Flexibility of the Constitution**

In many countries the fundamentals of the constitution are defined in writing and cannot be changed by ordinary legal process. The constitutional law of the United Kingdom is quite unlike these rigid written constitutions: it can be changed by the same procedure as any other law. Where fundamental and ordinary law can be changed in exactly the same way, the constitution is said to be flexible.

Constitutional laws and practices have the flexibility of steel, with as much emphasis on the word "steel" as on the word "flexibility." No special process is required to effect a constitutional change, but certain privileges are considered

so valuable that they would not be curtailed or removed except in a serious crisis and after careful examination of possible consequences.

This sense of the fitness of things is a necessary prerequisite of a flexible constitution. Unless there exists a traditional respect for fundamentals, the political fabric is liable to serious damage in times of stress. Where such fears are lively, the clear separation of constitutional and ordinary law is desirable and may take one of two forms. Either the constitution will be declared unchangeable or it will be declared capable of change only by a difficult and cumbersome process. In France, constitutions of the first type have been usual; in the U.S.A. there is a constitution of the second type, change being possible only with the consent of a simple majority ruling in three quarters of the States, together with a two-thirds majority in both houses of Congress.

Two kinds of flexible constitution are possible: in the first the constitution may be clearly set out in a document or series of documents, though the ordinary process of law will effect a change; in the second the constitution has no clearly defined hedges or boundaries. It is necessary in Britain, where the constitution is of the second kind, to seek for constitutional law in many out-of-the-way places: ancient usage, centuries-old legal decisions, and half-forgotten charters. Also there are changes constantly going on which command the attention of the careful observer. Changes are sometimes made by clearly visible processes, like enactment by Parliament, and sometimes by processes of gradual erosion or building up which are almost imperceptible in their action, such as the creation of precedents by judicial decisions.

In a community where a sense of citizenship is reasonably developed, the advantages of a flexible unwritten constitution is that the State can easily be adapted to changing circumstances. The slow changes required by alteration in economic conditions during periods of normal development can be accompanied by gradual adaptation of legal machinery to meet fresh needs. The swift changes necessary in switching from peace to war can be accomplished with equal ease and without irregularity.

The difficulty in making necessary changes arises not from the barriers of constitutional procedure but from the temper of the citizen. It is often difficult to secure consent for a policy of drastic change, because the need for change is not apparent early enough in the minds even of politically active citizens. A reasonable sense of responsibility must be present, or a flexible unwritten constitution would not provide for a workable system of government. But speedy acquisition of new knowledge is also required if full opportunity is to be taken of the advantages given by a flexible constitution. To know enough and to know it soon enough is not always possible. Therefore citizenship, however well taught and understood, can never completely realise the hopes of the idealist.

### **Unitary and Federal Government**

Besides classifying constitutions as flexible and rigid, it is possible to classify them as unitary and federal. Where the government is highly centralised, the form of constitution is normally unitary. Power is concentrated in a legislature responsible for legislating on any kind of subject whatever. There is also a clearly defined executive body, responsible for enforcing the rules prescribed by the legislature; and there is a judicature for the whole country, to punish offenders in a uniform way wherever judgment is given. Whether the constitution in such a case is "written" or "unwritten," it is unitary in character. The British constitution is of this type, since all local law-making bodies exercise delegated powers only, and derive their authority from Parliament, not from a constitution which Parliament is prevented from changing by ordinary legislative process. Moreover, the courts always give precedence to statutes as against other forms of law.

A federal constitution, however, provides for a formal allocation of specific rights and powers to central and provincial authorities. In some cases, the powers left over after specific powers have been allocated at the centre and at the circumference, are left to the federal government, as in the case of Canada. There a written constitution lays down the rights to be exercised by the provinces and transfers residuary powers to the central authority. In other cases, such as

Australia and the United States of America, residuary powers are given by the constitution to the "States." In such cases care is taken to grant enough specific powers to the centre to allow for organisation of defence, control of foreign policy, trade negotiations with other countries, and the levying of taxation for federal purposes.

### **The Theory of Parliamentary Sovereignty**

According to Professor Dicey, the two fundamental principles of the British constitution are the "sovereignty of Parliament" and the "supremacy throughout the constitution of the rule of law." These two principles are accepted by the courts of law and are basic for our legal system.

Parliamentary sovereignty means that the supreme power in the community is vested in a body known as the "Crown in Parliament," comprising Sovereign,\* Lords, and Commons. This body can legally change any law or practice whatever.

The scope of Parliamentary activity is, in legal theory, all-embracing; and the only limitations to its orders would be the result of human incapacity or obstinacy. For example, by Act of Parliament, the succession to the throne can be changed, the Armed Forces can be dissolved, private property can be abolished, and the Church of England can be disestablished. Possibly the most striking example of Parliamentary sovereignty is to be seen in the legislation which applies retrospectively. Actions legal when performed may become illegal at a later date; and actions illegal when performed may, in effect, be legalised by Acts of Indemnity.

The most dangerous aspect of Parliamentary sovereignty seems to be that Parliament might lengthen its existence unduly. Elections could be indefinitely postponed, or new machinery could be created whereby a popular verdict on the constitution of the Commons would be impossible in the future. Political victories on these issues in the past, however, make such an event improbable.

\* A Queen Regnant holding the Crown in her own right has all the prerogatives of a King. The position of the husband of a Queen Regnant has varied in each case that has arisen.

Anson, *Law and Customs of the Constitution*, 4th Edn., 1935.

The value of the principle of Parliamentary sovereignty is that it enables the courts of law to make decisions without any possibility of litigation about the constitutional validity of a Parliamentary enactment. Moreover, where British courts of law have authority, the boundary line of British and foreign legislation is not relevant. If Parliament has declared any activity illegal, the courts will deliver a verdict in accordance with Parliamentary decisions. Acts committed outside the country are liable to be punished as well as acts committed inside it. Foreigners may be punished as well as British citizens. Parliament can, in legal theory, deal with any issue, and it is the business of the administration to do such work as Parliament prescribes, and for the judiciary to punish those who break the law. Much of the law enforced by the courts is not statute law, but it can be modified in any way whatever by Parliament. As a result there is a final seat of authority which combines unquestioned authority and popular control. Especially where the law on a subject has been codified by Parliament, the advantages of sovereignty are clearly apparent.

### **Limits to Sovereignty**

Sovereignty implies the absence of limitation to power. Such power can hardly be reckoned as an attribute of anything less than the Divine, and Parliament cannot ever claim to be a sovereign in the sense that Prospero, in *The Tempest*, could claim it when he said: "My charm cracks not; my spirits obey." The power of Parliament, while theoretically unlimited, is in fact subject to a number of very real restrictions, apart from the obvious consideration that Parliament is concerned with human beings and must work through human instruments.

The first practical limitation is geographical. The United Kingdom of Great Britain and Northern Ireland is more affected by the legislative activity of Parliament than is any territory outside this area. The overseas dependencies of the United Kingdom are subject to the same kind of control, but distance is a factor in weakening its effectiveness, and local customs are often a barrier difficult to surmount. In certain other territories within the Commonwealth, where a large

measure of responsibility has been conceded to colonial legislatures, the power of Parliament is in reality small; and in the Commonwealth member countries (formerly called Dominions), Parliament has ceased to be an effective organ of government. It is possible to argue that rights surrendered by Parliament can be re-assumed at will, but this is to take an entirely unrealistic view of the position. The acknowledgment of independent status for Commonwealth countries means a permanent renunciation, which reduces the area within which the authority of Parliament is truly effective.

The major limitation on Parliamentary sovereignty in the United Kingdom is the result of a slow growth of political consciousness. Political topics have become a permanent feature of everyday conversation. Criticism of the Government is the accepted privilege of every citizen. A considerable number of people find politics uninteresting, but few countries have so many people who are steadily drawn into the orbit of political affairs. Voluntary organisations exist whose activities involve relations with the State, and political activity is therefore steady and strong. Party organisations are constantly at work, preparing for elections, local and national; holding conferences; passing resolutions; and issuing statements of policy. Parliament cannot neglect this activity. This is not merely because of the fear that a fresh election would shatter a Government majority or reduce the chances of the Opposition in securing a majority. It is the outcome of political activity carried on over many years and would have its effect, election or no election. It has become accepted that Parliament shall take note of movements in the country. Parliament is far from being a rubber stamp for popular opinion, but it is in a measure the agent of the people. It has a mandate which is, however, constantly being modified after election time in the light of the country's reaction to existing law and to reform proposals.

A distinction has been drawn between political and legal sovereignty. Constitutional lawyers have pointed out that the sovereignty of Parliament means in practice that the ordinary courts of law will punish offenders against statutory law, and will only punish those who disregard other rules



when those other rules are either tacitly or expressly approved by Parliament. But the courts could not enforce legislation unless it was more or less in tune with the national will. Trade unions could not be suppressed even if Parliament were misguided enough to attempt to suppress them. Religious liberty could not be taken away even if Parliament attempted to abolish it. A powerful, well-rooted interest can defy the clearly-expressed view of Parliament, as was seen after the Prayer Book controversy of 1928. A revised Prayer Book had been prepared by the ecclesiastical authorities, but Parliament refused to support Convocation. Nevertheless, the new book was used, and clergymen defying Parliament were not punished. Parliamentary sovereignty is a theory for the courts of law, and it is maintained there. But real power in the community is to be found in the organised groups which together make up the social unit of which the State is the political expression.

### **The Rule of Law**

The "rule of law" means that citizens are subject to rules which are reasonably clear and reasonably well known. Put in another way, it means the absence of arbitrary government. In the more special sense of the phrase, as used by Professor Dicey, the rule of law means that every person is subject to the ordinary law as administered in the ordinary courts. "Ordinary law" is law which, in the last resort, derives its sanction from Parliament. A great deal of it is not Parliamentary enactment, but Parliament could, in theory, change it at any time; and where non-statutory law is in conflict with Statute, then Statute prevails. "Ordinary courts" are those courts which Parliament approves as the tribunals for dealing with ordinary criminal and civil cases. These courts were not, for the most part, created by Parliament, but arose, as did Parliament itself, out of the specialisation of the *Curia Regis*, in early times. Later on, these courts acquired a fixed procedure and a fairly clear definition of function. As they did so, they acquired a measure of independence of the Crown, which led the King to create new courts more amenable to his will. Many of these later courts were

dissolved by Act of Parliament, but the older courts remained. They have been reorganised at times by Parliament, and some new courts have been created. All the tribunals in this system of organisation are ordinary courts and they are concerned with the ordinary law of the land.

Corollaries of the main proposition are numerous. One of them is that the individual citizen is responsible for his own actions. He cannot divest himself of responsibility by pleading that he was ignorant of the law, or that he was obliged to obey a superior. This responsibility of the citizen is not the same for all persons, but the principle of responsibility applies to all citizens. There is no such thing as complete exemption, except for the monarch, from responsibility to the ordinary courts. All must answer for misdeeds. It is, nevertheless, the case that young persons are protected by the law from the consequences of unwisdom in a way which adults would not expect. Again, a plea of insanity may secure a verdict upon an offender different from that on a sane man. These are modifications of the general principle, which amount in some cases to a form of privilege. But, for the most part, all ordinary men and women are subject in the same sort of way to the jurisdiction of the ordinary courts.

Another important corollary of the rule of law is that every kind of punishment inflicted on the citizen is either the result of a verdict in the ordinary courts, or, if it is the outcome of any other form of jurisdiction, the legality of the punishment can in normal times be tested in the ordinary courts. For special classes of people, there are restrictions on activity which do not apply to citizens in general. The soldier, for example, is subject to military tribunals administering military law. But the soldier is subject to ordinary law as well, and he can, if he wishes, seek in the ordinary courts for a remedy against decisions of military tribunals when such decisions are alleged to be beyond the powers conferred on the military authorities.

In accordance with the principle that "the King can do no wrong," no proceedings can be taken against the monarch personally. But a distinction has in course of time been made between the private and public acts of the monarch. Until

1947, however, no proceedings could, with a few exceptions, be brought, as of right, against Departments of State. In cases of alleged breach of contract, procedure by "Petition of Right" was allowed so that compensation could be secured. Property could be recovered by the same method, which was the necessary preliminary to procedure in the ordinary courts. In the case of torts, *i.e.* civil wrongs other than breaches of contract, it became usual for Ministers of the Crown to handle cases on behalf of employees. For such offences as negligence, there was no Crown liability, but settlements were in fact made out of public funds, on lines somewhat similar to settlements made by ordinary judicial process. Under the Crown Proceedings Act, 1947, it is provided that actions involving contracts or torts, brought against Departments of State, shall as a rule be dealt with in the same way as actions against ordinary citizens.

### **Judicial Powers**

The courts of law give decisions upon all sorts of cases. In medieval times they were ostensibly concerned with applying customary law and royal ordinances based upon it. But in practice the courts were makers of law. Where no precise rule existed to suit the case, a decision was given in accordance with the most appropriate parallel case. A large number of decisions helped to make law precise, and such decisions were binding in subsequent cases. Verdicts came to have the force of permanent law. In this way English Common Law was built on innumerable decisions and had a distinctly English flavour. Unlike Continental law (and Scottish law to some considerable extent), English law owed little to Roman law. This stressed the will of the ruler, who in theory owed his authority to the people, the true source of his power. English Common Law was based on custom, interpreted to fit the individual cases before the courts; in medieval times Parliament was primarily the highest of courts, delivering the most important decisions, under the presidency of the King. Out of this arose in course of time the rule that the courts give absolute priority to statutes, and the courts, which are the servants of Parliament, claim the

right to deal with any sort of dispute that may arise in interpreting the law.

In many countries there are two parallel systems of jurisdiction: one for the ordinary citizen in his relations with other citizens, and another for officials of the State in their relations with each other and with ordinary citizens. This applies in France, for example, where there is a *Tribunal des Conflits* to decide, in the event of disputes, whether cases should be settled in one set of courts or the other. Nothing closely comparable to this system exists in England, where there is one principal system of jurisdiction, all other tribunals being strictly subordinate to the ordinary courts.

Dicey's view of the Rule of Law still holds good to a large extent. But his theory never quite corresponded with the facts, and in recent times the picture has been very much changed. In a large number of cases, Ministers are empowered by statute to adjudicate on a variety of disputes. Officials of much lower rank exercise delegated authority, and do in fact deliver innumerable verdicts and inflict innumerable penalties. Very often statutes have included provisions allowing no appeal from these verdicts, thus excluding them from examination in the ordinary courts. With the vast extension of State control in economic affairs, the number of disputes has greatly increased, and eminent lawyers like Lord Hewart have regarded with misgiving the withdrawal of cases from the ordinary courts to what are in effect administrative tribunals. It still remains the case that any aggrieved person can ask that the ordinary courts shall enquire into the legality of actions taken by official bodies, and a good deal of ingenuity has been used to put up a barrier against the encroaching tide of judicial power exercised by the administration. By order of *prohibition*, administrative bodies have been prohibited from acting outside legal powers as defined in the ordinary courts. By order of *mandamus*, they have been compelled to perform specific tasks in accordance with judicial interpretation of their duties. By order of *certiorari*, Government orders have been quashed on grounds of illegality, even though statutory protection has provided against the questioning of administrative decisions in the

courts. Before the Administration of Justice (Miscellaneous Provisions) Act, 1938, prerogative writs of *prohibition*, *certiorari*, and *mandamus* were used, but when they were abolished orders were made available for the same purposes.

Broadly speaking, the advantage of the present system is that it endows administrative authorities with an opportunity to avoid many of the crippling delays consequent on actions in the ordinary courts. The disadvantage lies in the absence of well-established uniformity of procedure by administrative authorities. Favouritism is a possibility; occasional injustice is a certainty. The drawbacks in the administrative tribunals of the day were carefully examined by the Franks Committee on Administrative Tribunals and Inquiries set up in 1955. Following the report of this Committee, the Government sponsored the Tribunals and Inquiries Bill, which became law in 1958. An advisory Council on Tribunals (with a Scottish Committee) was set up to review the working and constitution of a large number of tribunals specified in the Act, including such important bodies as National Insurance Tribunals, Pension Appeal Tribunals, and the like. The Council may also report on tribunals not included in the schedule to the Act. The Council itself is appointed by the Lord Chancellor and the Secretary of State for Scotland. The Act also lays down that, in regard to certain administrative tribunals, any party to a case who is dissatisfied on a point of law with a decision reached may appeal to the High Court and ask for "a case to be stated" for the consideration of the High Court as rules of court may provide. With certain exceptions, tribunals and ministers acting with judicial authority are required to give reasons for decisions, and even where earlier Acts specifically exclude consideration of certain types of dispute from the ordinary courts, the High Court may nevertheless issue orders of *mandamus* and *certiorari* to implement the purposes for which these orders are designed.

### **Conventions of the Constitution**

In addition to the rules of law, innumerable practices have grown up which are fundamental to the working of the

constitution. Professor Dicey called these practices "conventions." The name has become deeply rooted and has, in the specialised sense used here, acquired a different meaning from the ordinary connotation of the word. James Stuart Mill called the practices "maxims," and Sir William Anson called them "customs." They are in fact a combination of things and include all the rules and principles that are generally observed within, though they are not part of, the framework of formal constitutional law.

Conventions are the oil for the machinery of the State. The smooth running of the whole depends on the soundness of the parts and on the lubrication. The law tends to be unyielding, but conventions can be modified by vigorous personalities and in the light of new circumstances.

Every aspect of government requires the observance of rules additional to those prescribed by law. On the legislative side, Parliament, while conferring powers on the Queen, does so in the expectation that these powers will be exercised by his Ministers and not by the monarch himself. On the executive side, it is the Queen who in law appoints Ministers, but it is a convention that she appoints the leader of the dominant party in the House of Commons to act as Prime Minister. The Prime Minister is largely responsible for other appointments, but he in turn is subject to convention in making his choice. He is expected to appoint experienced, well-tried, and loyal party men. His discretion is wide, but it is not unlimited. With regard to the judiciary, it is an accepted practice that when the House of Lords is acting as a court of appeal, any member may sit, but in practice the law lords deliver judgment alone.

Law and convention are closely intertwined. Some conventions derive their sanction in a measure from the law. For example, it is a convention that a Ministry defeated in Parliament on a major issue shall resign from office or dissolve Parliament. Failure to do so would not be an offence to be dealt with by the courts, but Parliament could, in theory, ensure the observance of the rule by refusing to vote taxes, without which government could not be carried on at all. It would also be possible to pass legislation depriving the

Ministers of their posts. But this clumsy procedure is not necessary, nor is it conceivable that it would be used in present circumstances. Much more subtle control is exercised. A practice becomes sanctified by repetition and agreement, until perhaps given formal recognition. For example, the office of Prime Minister was for a long time based on understandings rather than on law, but in 1917 an Act of Parliament provided that the official "known as Prime Minister" should have a country property called the Chequers Estate. For the Commonwealth as a whole, many practices have become hallowed by time and by experience of their usefulness, and these in turn have come to be recognised by Acts of Parliament which, when interpreted by the courts, involve the judiciary in a consideration of "constitutional usage." An intricate network of law and convention has been created by which the relations of individuals and associations with the State are determined.

### **Characteristics of the Constitution**

The British constitution has two apparently contradictory characteristics. First there is an element of isolation about the various organs of government, which suggested to the acute French philosopher, Montesquieu, the idea that the supreme merit of the British political system was the existence of checks and balances in the constitution, allied with a "separation of powers." According to this theory, the executive, legislative, and judicial powers are so divided that each authority has a quasi-independent sphere, but each can check the other from seizing supreme power. To many observers it seemed that Montesquieu had really discovered the inner spring of the constitution and the true solution of the problem of tyranny. Up to a point, Montesquieu was right. The judges were very largely independent. Once appointed, they could not easily be dislodged. Their judicial pronouncements were privileged, their sphere was well defined, and they could punish the highest offenders, with the exception of the Sovereign himself. The members of the legislature were likewise privileged in speech, and the sovereignty of Parliament was accepted by the courts; yet Parliament could be dismissed by the monarch, and M.P.s could be punished in the courts

for ordinary offences. The executive was also strong by virtue of the vast store of power derived from prerogative through ancient law, but the monarch could not protect his servants in very grave circumstances, when they might be impeached in the House of Lords by the House of Commons as the prosecuting body. Nor could he secure money for carrying on his government without Parliamentary approval. In the twentieth century the monarch does not personally initiate policy, but the exercise of prerogative powers is still important. The legislature, the executive, and the judiciary wield their powers without serious danger of absorption of all power by any one of them. But checks and balances alone are not an infallible safeguard. Hitler swept an elaborate system aside in 1933, as Napoleon did in 1799.

Montesquieu missed the second key to the British constitution, the key of co-operation. Co-operation results partly from a spirit of compromise, and a readiness to make concessions, without which government cannot be successful. Co-operation depends also upon the fact that Parliament is the apex of the whole constitutional system. In the last resort Parliament is entitled to dismiss the executive or overturn the courts. Under the shadow of Parliamentary supremacy, a delicately co-ordinated system of government has slowly developed. The historical process by which this co-ordination has been achieved would hardly have been possible but for the wise restraint of Parliament, which enabled an equilibrium to be established without the precarious accompaniment of an undetermined superior. As the Cabinet system grew up, the Cabinet became a co-ordinating instrument. The nation is guided by the Ministers, yet, in a political, though not in a legal sense, they are responsible to the electorate. Departments are controlled and required to implement Cabinet policy, yet advice is readily taken from permanent civil servants. There is a flow of ideas from many sources into the Cabinet, which has the task of shaping policy. Because of the skill with which this is done, government is adapted quickly and quietly to changing events.



## CHAPTER II

### THE ELECTORATE AND THE PARTY SYSTEM

#### **The Representative System**

There are two principal ways by which government can be kept in touch with opinion in the country: one is by selecting individuals known to be influential and by securing their agreement on policy; the other is by asking groups of people to make the selection themselves and send their representatives to discuss common problems. The King adopted the first method when calling upon his tenants-in-chief during the Middle Ages, and the relics of that system are seen in the appointment of peers in modern times. But whereas this method of government has shrunk very considerably, the second method—by which groups of people select their own representatives—has come to be the king-pin of the constitution. The distinction between shire and borough was very real, and representatives chosen in the shire courts were different in outlook from the men who came from the boroughs. It was a fortunate accident that these two classes came, in the fourteenth century, to deliberate together, since it checked the development of a rigid caste system and promoted the growth of a single representative chamber as a unit in the legislature.

At times, however, the element of election was nearly absent from the Commons. Representative institutions were in peril when shire representatives came to be chosen in practice by a few Justices of the Peace, and borough representatives were nominated by wealthy men. Conditions were so bad in the eighteenth century that genuine elections were comparatively rare. When they did occur, there were riots and intimidation, drunkenness and violence. The representative system fell into disrepute. Continental practice tended to discard representation, and so far as representation existed in England, it could not be regarded as a model for others to

copy. When the House of Commons excluded John Wilkes, a duly elected M.P., the clouds hung heavily over the electoral system. The Commons seemed to be on the verge of turning into a closed house following the pattern of many boroughs, where the governing body had come to nominate its successors and where no appeal to the electors was made at all. The notorious John Wilkes helped to save the Parliamentary system from this fate and in the nineteenth century a powerful reform movement led to a transformation of the method of representation.

The distinction between urban and county constituencies, which was fundamental to the representative system in the Middle Ages, gradually became less important in the sixteenth, seventeenth, and eighteenth centuries. But the Reform Bill of 1832 granted the vote to well-to-do tenants and leaseholders as a county qualification, while the £10 householder vote replaced a curious jumble of urban franchisal qualifications and gave substantial townsmen a share in elections. The difference between town and county appeared again in 1867, when the towns won household suffrage but the county vote was restricted to occupiers of tenements valued at not less than £12 a year. In 1884 the county franchise was equated with that of the town, subject to some minor exceptions. These minor exceptions persisted down to 1918 when they were swept away by the Representation of the People Act of that year. The franchise was then made uniform in town and county.

The original arrangement of constituencies, like the provisions of the franchise, revealed the distinction which was at one time so sharp between town and county. With the flow of population from one area to another, especially during the period of the Industrial Revolution, the anomalies of representation became marked. But while there was always a substantial electorate of 40/- freeholders in the counties, there were some urban constituencies which became entirely deserted. Old Sarum was only a ruined mound in the eighteenth century, but two members were still returned to Parliament from this once-flourishing borough. The Act of 1832 took representation away from the worst of these

electoral areas, and gave members to large urban centres and the more heavily populated counties. Further redistribution of seats occurred at later dates, gradually blurring the town and county distinctions. But despite all the merging of towns into counties and the division of cities into electoral districts the ancient pattern is still discernible.

### **Qualifications of Electors**

The tide of nineteenth-century politics flowed in the direction of universal franchise. In the days of Gladstone and Disraeli, the flood-gates opened and the numbers of voters vastly increased. But while most men secured the vote, agricultural labourers coming in last in 1884, women were excluded until 1918. By the Representation of People Act at the close of the First World War, 1914-18, the work of women in the achievement of victory was rewarded by votes for those over thirty years of age. Ten years later women received the vote on the same terms as men.

Under the Representation Acts, 1918 and 1928, which made fundamental changes in the electoral system, the qualifications of electors were three:

(1) Electors must be over the age of twenty-one and must normally have been resident, at the time the Electoral Roll was drawn up, in the borough or county where they vote. This residence qualification may be used by people who, subsequent to the preparation of the Electoral Roll, have moved elsewhere. But they must register their votes in the constituency where their residence qualification applies and not in the area where they happen to be living at the time of the election.

(2) A vote was also given to the occupiers of business premises, provided that the premises had an annual value of not less than £10. This vote could be exercised in addition to the vote exercisable by virtue of the residence qualification. But this voting right was removed under the Representation of the People Act, 1948.

(3) The University vote was granted to men and women over the age of twenty-one who had taken a degree or its

equivalent. This vote could also be used in addition to the vote exercisable by virtue of the residence qualification, but no person might use more than two votes altogether in any one election, and if he used two votes, one of them had to be on the residence qualification. Like the business qualification, this right disappeared under the Representation of the People Act, 1948, and it became certain by 1953 that it would not be restored by any party.

Before 1926 two electoral registers were prepared each year, the Representation of the People (Economy Provisions) Act, 1926, provided for an annual register, but in 1948 provision was again made for the preparation of two registers each year. However, in 1949 the Electoral Registers Act again provided for only one register a year. During the Second World War, 1939-45, it was felt that there should be provision for those who had been compelled by circumstances to leave their homes, so that they could exercise a vote in by-elections or, if need arose, in a general election. By the Parliamentary Electors (War-time Registration) Act, 1943, a special register for war-time elections was established on the basis of the National Registration system. Civilians and members of the Armed Forces, absent through the war, were allowed under appropriate circumstances to vote either by proxy or by post. Under the Representation of the People Act, 1945, provisions were made for the assimilation of the local government and parliamentary franchise, though occupants of business premises had the option in local government of using either a business or a residence vote. By the same Act, anomalies in the Act of 1943 were remedied so that not only members of the Armed Forces raised in the United Kingdom, but also members of the Indian, Burmese, and Colonial Forces, who but for their war service would have been resident in the United Kingdom, were entitled to be registered. Postal voting was an important feature in the elections of 1945 and 1950. The present rule is that service and civilian voters, compelled by circumstances to be away from their area of registration, may be treated as resident at the address in the U.K. which they specify in their

declaration. Such electors may vote by post or, in certain cases, by proxy.

### **Electoral Areas**

Under the Representation of the People Act, 1948, each constituency returns one member to Parliament. By Redistribution Acts, many constituencies have been rearranged so as to establish the principle that each voter shall have an equal voice in sending a representative to Parliament. However, in spite of periodical changes the size of electoral areas varied very much from place to place in the 1940's. Accordingly, Boundary Commissions were set up to reshape the electoral areas so that, while each area should have some political and social homogeneity, the number of voters in each single-member constituency should be nearly equal. The plan drawn up in 1947 provided for 488 English seats, against 510 at the General Election of 1945. Counties and boroughs were made approximately equal: 222 county constituencies and 266 borough seats. Similar schemes were undertaken for Scotland and Northern Ireland, so that the United Kingdom might be given the benefit of a system which allowed each voter as nearly as possible an equal share in the election of representatives. A later re-distribution made by the Boundary Commissions provided for 630 constituencies in 1955, on a basis of an average of about 55,000 voters for each area, but wide differences between the size of constituencies have persisted owing to the distinction between urban and county areas.

### **The Conduct of an Election**

After Parliament is dissolved, or, in the case of a by-election, after a vacancy has occurred, notice is given that an election will be held. In the case of a general election, a Proclamation is made by the Queen, stating that she desires the advice of her people in Parliament. Next comes an Order-in-Council, directing the Lord Chancellor to issue the necessary writs or orders. Peers are summoned by separate writs, but writs for the House of Commons go to the returning officers who conduct the elections, and declare who has been elected.

The returning officer, during the period between the third and eighth day after the issue of the proclamation summoning a new Parliament, attends at a public hall to receive "nominations." Between the preliminary notice of the election and the receipt of nominations the prospective candidates and their supporters are engaged in electioneering. There are stringent rules against bribery, and against expenditure in excess of a statutory limit which was fixed in 1948 at £450 plus 2d. for each elector in country areas and 1½d. for each elector in urban areas. But within this framework there is ample opportunity for explaining to the elector the advantages and disadvantages of voting for the various candidates and the parties they represent. "Election addresses" are compiled and issued to each voter. Posters appear with photographs of the rivals; and appeals, couched in emphatic terms, are made to vote for the candidate by whose authority the posters are issued. Public meetings are held and opportunities given for questions. Loyal and skilled supporters of each candidate tackle householders directly by "canvassing" on the doorstep for the votes of the electors.

During the nomination period, the returning officer examines the nominations, which must be correctly set out or the nomination is invalid. There must be a mover, a seconder, and eight other supporters for each candidate. All ten supporters must be electors on the Electoral Roll. If only one nomination is received, the candidate nominated is declared duly elected. If there are more nominations than one, a poll is necessary and a polling day, fixed by the Government at the time of dissolution, is announced for the forthcoming election. An official announcement to this effect appears in public places. The candidates themselves usually proceed to notify the electors individually. Meantime, the pace of the election quickens, more posters go up, more meetings are held, and more persuasion is attempted.

Election day itself is full of excitement. Cars, restricted in numbers according to the numbers and density of population in the electoral area, hurry to and from the polling booth, bringing along electors who, it is hoped, will vote for the

candidate on whose behalf the cars are running. The polling booth is a building, often a school or church hall, which the returning officer has secured for the purpose of enabling electors in a given district to record their votes. The returning officer makes a note of each issue of a ballot-paper. On this the elector places a cross against the name of the candidate he favours.

The procedure is secret—the ballot-paper providing no evidence to the officers who count the votes as to who has marked it. But it is possible to find out how a given person has voted, should an Election Petition Court decide that this is necessary. Each ballot-paper is numbered, and the registration number of the voter is recorded on the counterfoil by the presiding officer of the polling station. All counterfoils are retained in a sealed box for a period fixed by statute, after which the counterfoils are destroyed. At the close of the election the votes are counted, and in cases where the decision is by a narrow majority a re-count may be demanded.

The announcement of the election result is followed by congratulations to the successful candidate, and candidates who fail usually join in with the rest in offering their felicitations. An unfortunate candidate who has polled less than one eighth of the total votes recorded loses his deposit of £150. This is a sum of money which every candidate is required to put up on nomination day as a condition of his nomination. The deposit is intended to prevent frivolous candidature. To any candidate whose candidature has been properly conducted and who polls over the statutory minimum of votes, the deposit he made at nomination is returned to him. But the mere announcement of an election result following an election does not mean that the successful candidate is assured of becoming an M.P. A period of time is fixed by law during which scrutinies and petitions can be made. Charges of corruption have to be examined and, if they are maintained in the High Court, an election may be declared null and void. A second election is then necessary. Assuming that all is in order, however, the successful candidate is merely required to take an oath of allegiance to the

Crown, or the equivalent affirmation of loyalty, and he becomes a Member of Parliament.

### **Origins of Party Government**

Nearly all candidates for election are the nominees of well-organised parties. A very few candidates stand as Independents, but their chances are usually small, and since 1950 only one Independent has been elected (1959)—a former Conservative who was not opposed by a Conservative.

The party system originated in the struggle between King and Parliament which developed in Stuart times. Streams of influence from an earlier period contributed to the making of the system, but it was in the seventeenth century that two clearly defined parties emerged. The broad difference of opinion in politics between the parties was that one side stressed the rights of the Crown to determine the policy of the country, while the other stressed the limitations of the Crown. The dispute was not at first a question of broad principle so much as a question of defining precisely the no-man's-land that lay between the acknowledged sphere of the King and the acknowledged sphere of the country's magnates and representatives in Parliament. The Civil War, which resulted in the execution of Charles I, was in fact a triumph for neither side. The victory was won by the Army, which proved as contemptuous of Parliament as it had been of the Crown. But military dictatorship was not in the English tradition, and it fell with the death of its chief architect, Oliver Cromwell. King and Parliament were both restored in 1660, both anxious to live amicably together, but neither ready to surrender the right to have the last word.

A new alignment occurred in the reign of Charles II, following to some extent the alignment of Roundhead and Royalist which had appeared in the Civil War. But now the battle was a battle of words only, and the sword remained in its sheath. A bitter controversy, however, forced members of Parliament to take opposite sides, and the two-party system, depending for its working on discussion rather than force, began at that time its long and eventful history. The



dispute arose over the King's brother, James, who was known to be a Roman Catholic, and who, because of the absence of legitimate offspring to Charles II, was next in the line of succession. The opponents of James brought in an Exclusion Bill designed to prevent him from ever succeeding to the throne of England. Because of the petition moved to exclude James, this party was known as the Petitioners. Their opponents were the Abhorrrers. Scurrilous language was used on both sides—the Petitioners becoming known as Whigs (so called from an extreme Presbyterian sect in Scotland) and the Abhorrrers as Tories (so called from rebel Catholics in Ireland). The Exclusion Bill failed and eventually James II succeeded to the throne. But, though dislike of him prompted Whigs and Tories to unite in his overthrow, new causes of dispute soon arose, and party divisions continued.

Very little in the way of general differences separated Whig from Tory at the outset, but the tendency of Toryism to rely on tradition and the tendency of Whiggism to put it aside grew more marked as time went on. Both sides stood for the continuance of Parliamentary government, the maintenance of the Established Church, and the expansion of the British Empire. But, as compared with the Tories, the Whigs wished to limit prerogative powers, to provide more freedom for Nonconformists, and to give fuller support to traders abroad in their rivalry with the foreigner, particularly the Frenchman. In the nineteenth century the Whigs accepted for themselves the title of "Liberal," which was applied derisively at first to suggest that they had broken all principles and were free from all their former pledges. Glorifying in the new name, the Liberals secured general acceptance for the change-over, while the Tories called themselves "Conservative," but secured approval for the new term only from their own supporters. The word "Tory" persisted, while the word "Whig" came to have only an historical interest. In the twentieth century the Labour Party arose, emerging as a considerable force after the First World War, 1914-18. As the new party grew in strength, the Liberal party lost ground, until a new two-party system emerged, with the Liberals as a party of secondary importance.

### **The Conservative Party**

It is impossible to define the precise policy for which the Conservative or any other principal party stands. This is not only because the policy changes from time to time, but because the members of the party are held together by a form of general allegiance rather than by adherence to an exact political creed. General allegiance is based on the belief that time has set its seal upon many institutions and practices which ought to be preserved, but, as Sir Robert Peel said in the "Tamworth Manifesto" of 1834, Conservatives were ready to provide "the correction of proved abuses and the redress of real grievances," based on "a careful review of institutions." The difficulty arises in defining abuses and framing remedies. The extreme right wing of the Conservative party is apt to define abuses very narrowly and to support reform only if the case for it is very amply demonstrated. On the other hand, the more ardent reformers in the Tory party stand for extensive change, and interpret very broadly Sir Robert Peel's dictum that Conservatives should not have "superstitious reverence for ancient usages."

Subject to qualifications, the main pillars of Conservatism can be explained in terms of political machinery, religious views, and economic doctrine.

The Conservative party has always stressed the importance of Commonwealth links. Although while in opposition (1945-51) it expressed some concern at the rapidity of Colonial advance towards independence, in office it has continued the process. Up to October 1962 nine former British dependencies had become full members of the Commonwealth under the Conservative regime: Ghana, Malaya, Nigeria, Cyprus, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, and Uganda. In the negotiations which were begun by the Conservative Government for Britain's entry into the European Economic Community (the Common Market), it was emphasised that some accommodation must be found for Britain's Commonwealth relationship. Many members of the party, however, were anxious about the possible harmful effects of Britain's entry on the Commonwealth, especially its economic links.

The long alliance of the Conservatives with the Anglican Church means that the party as a whole is in favour of retaining the Establishment. But Christians with other points of view are members of the Conservative party; and Neville Chamberlain, who was Prime Minister at the outbreak of the Second World War, 1939-45, was a Unitarian. Though Anglicanism provides the Conservative party with powerful support, there are so many Anglicans who belong to other parties and so many party members who belong to other Churches (or to no Church at all) that no precise policy on "Church and State" is formulated by the party.

The sharpest line of distinction between the Conservatives and the Socialists lies in their stress on private enterprise in economic affairs. As Sir Winston Churchill said in 1945: "There is a broadening field for State ownership and enterprise, especially in relation to monopolies of all kinds. The modern State will increasingly concern itself with the economic well-being of the nation, but it is all the more vital to revive at the earliest moment a widespread, healthy, and vigorous private enterprise." Sir Anthony Eden said, in 1947, that the object of Conservative policy was "a nation-wide property-owning democracy." But the Conservative Central Office made it clear that no attempt would be made, if the Conservatives were in power, to restore either the Bank of England or the coal mines to private ownership. They have, however, opposed further nationalisation, and aimed at making the nationalised industries self-sufficing enterprises.

Differences on foreign policy between the Conservative and Labour parties, though often concealed, come out into the open at times. In 1956, a bitter conflict over Anglo-French intervention in the Suez Canal area contributed to swift withdrawal.

### **The Liberal Party**

The Liberals, who suffered a serious reverse after the First World War, 1914-18, were until that time one of the two major parties, and Liberals remain hopeful that the time may come when the electors will turn to them as the "middle party" to form a government, but with the march of time, Liberal hopes grow dim. As their name implies, the Liberals

lay stress upon liberty, by which they mean the freedom of the individual to choose the path he wishes to follow in whatever sphere he proposes to enter.

The conception of liberty in politics has undergone many changes, but in essence it now means the right of the citizen to choose the House of Commons and the right of the House of Commons to a final voice in the affairs of the country. In such general terms the doctrine would be acceptable to other parties, but the Liberals, after becoming weak in Parliament, advocated special machinery for the purpose of ensuring that each elector received an equal share, as nearly as might be, in electing members to Parliament. The Liberals criticised severely the system under which in February 1950 it required about 42,000 Conservative votes to send a member to Parliament, whereas it required over 293,000 Liberal votes to send a member. Under a system of Proportional Representation, by which, in multi-member constituencies, preferences could be indicated, this anomaly would be removed. In regard to the House of Commons, the Liberals have been earnest in their endeavour to prevent the accumulation of power in the hands of Ministers and officials. Owing to Liberal activity in 1933, the Agricultural Marketing Bill was ultimately amended by reducing the powers of the Minister in making regulations under the Act. On other occasions objections have been raised to the grant of wide powers to Departments, though not as a rule so effectively as in 1933.

Religious liberty is acceptable to all parties, but is in a special sense associated with Liberalism. At one time Nonconformity and Liberalism were almost interchangeable terms. Historically, the Liberal party has been very closely associated with the removal of every kind of disability to which Nonconformists have been subjected. But, the battle having been won, little remains to be done in the sphere of religious liberty, and the alliance of Nonconformity and Liberalism has weakened.

In economic policy, the Liberals steer a middle course between the Conservatives and the Socialists. As far as the organisation of internal trade and industry are concerned, the views of Liberals overlap into Conservatism and Socialism.

There is no support for nationalisation as such, or for private enterprise as such. All schemes should, in the Liberal view, be judged on their merits, with special reference to the freedom of workers and managers in the conduct of business. In the sphere of external affairs, Liberals have a special regard for free trade, which has been abandoned altogether as an immediate objective by both Conservatives and Socialists. Freer trade, in the opinion of Liberals, is vital to prosperity and peace. In this matter Liberals cling to the individualism which was the central feature of their policy in the nineteenth century. The early years of the twentieth century saw Liberals move towards the idea of the "Welfare State," but on the question of foreign trade they remained solidly against tariffs, and in 1960 they were the first party to advocate joining the European Common Market as a step in this direction.

### **The Labour Party**

The Labour party (known also as the Socialist party) has risen from humble beginnings in recent times. Trade unions were closely associated with the growth of the party, and as the trade unions became powerful they aimed at bringing their point of view to bear on Parliament. The legislation of 1867 and 1884, by which artisans, in town and country respectively, received the vote, provided an opportunity for working-class influence to permeate the House of Commons. The Trade Union Congress, under whose shadow the most vigorous trade unions co-ordinated their activities, worked through a Parliamentary Committee which grew active in the latter years of the nineteenth century. In 1893 the Independent Labour party was founded. The Labour Representative Committee, set up in 1900, provided the nucleus from which the Labour party was created in 1906. The Independent Labour party dropped gradually into the background, its eventual association with thorough-going pacifism giving it an insuperable handicap in the struggle for control of Parliament. After the First World War, 1914-18, the Labour party grew rapidly in stature and was called on to form a Government in 1923. But, as it was based on an uneasy alliance with the Liberals, the collapse came in a few months. Another term of office

occupied the period 1929-31, but it was not until 1945 that the Labour party secured a clear majority in the House of Commons and began a virtually unhampered attempt to shape the destinies of the country.

The fundamental aim of the Labour party is to give effect to the doctrine of social and economic equality by nationalisation or common ownership of the means of production, distribution, and exchange. By social and economic equality, the party does not mean exact equality of income for all members of society, but a certain levelling by which the extremes of poverty and riches shall be eliminated. But there is no suggestion of a social upheaval. The policy of the Labour party is still based on the idea of gradualness which inspired the Fabian Society in its opposition to the bloody revolution of Marxism. With regard to nationalisation, the ultimate aim is certainly to bring the basic industries of the country under national ownership. But there are always exceptions envisaged. For example, the leaders of the party have declared against State ownership of the Press, which it is believed would make the dissemination of genuine criticism extremely difficult, if not impossible. When out of power, the Labour party stressed the need for control of industry by the nation and for a more even distribution of economic rewards. But the assumption of office in 1945 led to stress being laid on greater production and more disciplined activity. Nationalisation, by itself, was not a panacea for all ills. Despite Labour efforts, nationalisation grew less popular, and the question of how far nationalisation should be extended helped to produce a rift in the party.

In external affairs the Labour party made no sharp break with the policy of previous Governments. The process of emancipation pursued by previous Governments was speeded up by the Labour party in India and elsewhere. In 1947 this culminated in the presentation of a Bill in Parliament for the establishment of independence in India. Elsewhere within the Empire the increasing control of affairs by the people on the spot was a mark of Government policy. With regard to foreign affairs, the Labour party is pledged to

co-operation with all countries willing to work together in the creation of world prosperity and peace. Accusations of subordinating British to American interests were made during Labour's period of office, but were repudiated. On matters of foreign policy there was much support for Labour from the Conservatives. This points to an important feature of party politics: that each major party, while holding a distinct doctrine, has the country's well-being as the main consideration. The Labour party comes within Burke's definition of a party as "a body of men united for promoting . . . the national interest," but it probably has sharper policy differences within its ranks than the other parties. It has been guarded in its attitude to Britain's entry into the Common Market.

### **Other Parties**

There is not in Britain the kind of multi-party system that exists in countries, like France, where there is a tendency against any single party securing a majority. In this country as soon as signs of a breakdown in the two-party system become apparent, a movement springs up to readjust the balance and make for a straight fight between the party in power and the party in opposition. But new groupings have at various times occurred, and in recent years the new groups have become sufficiently important to warrant the view that the two-party system, as it was known in its nineteenth-century hey-day, has suffered some modification. On the left wing, various groups have sprung up, advocating more radical change. Nevertheless the two-party system is strong.

The Communist party is especially important because of its close integration and rigid discipline. Many "intellectuals," disappointed with the slowness of the well-established parties, turned to Communism as a way of achieving change quickly and transforming society fundamentally so that all the inner disharmonies might be resolved. Communism is old, but the Communist parties in Britain, as elsewhere, are young. They were born in the period which followed the Russian Revolution of 1917, and their aim was to overthrow the system of private enterprise, as was done in the U.S.S.R. A Communist International was set up to co-ordinate the activities of

Communists everywhere. But this was abandoned during the Second World War, 1939-45, leaving each party ostensibly free to develop along separate lines. In fact, however, the parties in different countries continued to look to Moscow for advice and help. Members were expected to yield complete obedience to Russian policy-makers, and in practice people were expelled, or resigned from the party, if they found themselves in disagreement with the "party line." On the whole, Communism has not made a strong permanent appeal in Britain, no Communist being returned to Parliament in 1950, 1951, 1955, or 1959. But really firm members have zeal, determination, and ability. They have seeped into the trade unions, grasping key positions, and they are quick to seize opportunities for discrediting their opponents.

Common Wealth was founded in 1940. It was a child of the Second World War, 1939-45, and was nurtured by the critical situation of Britain in the period when the country stood alone against Germany and Italy. Many people felt that nothing less than an anti-Fascist creed, uncompromising about a speedy change to genuine Socialism, was adequate to meet the challenge of Nazism and kindred doctrines. The alliance of Germany and the U.S.S.R. temporarily discredited Communism, and the war-time coalition between the Conservative, Liberal, and Labour, parties, prevented the appearance at by-elections of opposition candidates from the parties which had agreed to the party truce. Common Wealth had a spectacular rise to fame, winning several by-elections on the strength of pungent criticism of a Government which was at that time faring badly in war. The stock of the Government began to rise, however, from 1943 onwards, and Common Wealth became torn with dissension. With the abandonment of the party truce in 1945, Common Wealth sank low and disappeared as a political force.

The Independent Labour party, working within the ranks of the Labour party from 1906 to 1932, became completely separate in the latter year. The party was utterly opposed to war, and favoured a rapid move towards Socialism. But it is a spent force, important historically, but with no real likelihood of recovering lost ground.



The Co-operative party is the party of the Co-operative movement. There are about 800 Co-operative Societies in Britain, each with an independent financial structure but working within a Co-operative Union which co-ordinates the activities of the separate societies. The Co-operative Union, the Trades Union Congress, and the Labour party are linked by the National Council of Labour. Co-operative M.P.s invariably support the Labour party.

The National Liberal and National Labour parties came into existence in 1931, when Ramsay MacDonald headed a National Government to deal with the economic crisis of that time. These two small parties became in effect part of the Conservative party. Disraeli observed that England did not love coalitions. It seems equally true that England, while favourable to government on the party basis, prefers the two-party to the multi-party system, partly, no doubt, because, traditionally, Englishmen divide themselves so often into "progressives" and "conservatives."

### **Party Organisation**

In competing for votes, political parties depend on elaborate organisation. In addition to exercising his vote, the citizen may, if he wishes, join a party organisation. Inside the party he can, by persistence and ability, come to exert a good deal of influence either locally or nationally. Historically, the party system is centuries old, but in its modern form it dates back to the 1860's. The working-class vote in the towns (1867) led to the creation of a highly organised party system. In this matter Chamberlain was a pioneer, organising the Birmingham Political Union so as to secure the maximum possible support for the Liberal cause.

The two principal Conservative organisations are the Conservative Office and the National Union of Conservative and Unionist Associations. The Central Office, set up originally by Disraeli in 1870, is staffed by salaried officials working under a party leader. The National Union dates back a trifle earlier and is a federation of local Conservative bodies in different constituencies, grouped into Areas. This federation, working in close contact with the Central Office, is

run on a democratic and representative foundation, and holds annual conferences. The leader of the party has immense power, both in regard to officials and control of party funds. These funds are subscribed voluntarily and are to a large extent veiled in secrecy.

The Liberal party is organised on similar lines to the Conservative. There is a Liberal Assembly, corresponding to the Conservative Annual conference; Council and Executive are also on the Conservative pattern. There are Constituency Associations and party funds, much depleted in recent times. Liberal party officers are, however, elected, not nominated; and rather more is left to local organisation.

The Labour party is organised very differently but with equal elaboration. Transport House in London provides a home for the secretariat of the Labour party. The Labour party is a separate organisation from the Trades Union Congress, but receives the bulk of party funds from trade union sources. The political levy on members goes to finance political activities, including the payment of officials and the support of candidates at elections. It is natural to find a high proportion of positions in the Labour party's organisation allocated to trade unionists. About half the members of the National Executive of the Labour party are trade union nominees, and some of the others are in fact closely associated with trade union activity. Local organisations are influenced in every case by trade unions, and in many instances trade unions are responsible for nominating candidates for election to the House of Commons. There are, however, considerable sources of non-union support for the Labour party. Housewives and professional people outside the trade union movement are important elements. Applications for affiliation to the party are carefully scrutinised, with a view to preventing the infiltration of groups anxious to undermine rather than promote the solidarity of the movement. Discipline is exercised over the members through voluntary acceptance of rules under which Annual Conference decisions have normally been taken as binding on dissentients. Despite this, however, clashes occur between

the Parliamentary Labour party and the Annual Conference. In 1960 the Parliamentary leader, Hugh Gaitskell, refused to accept a majority decision of the Annual Conference on nuclear disarmament, and was supported by a majority of his Parliamentary colleagues. The Conference decision was reversed in the following year.

The Communist party is organised in branches which are grouped into districts. The districts are grouped nationally, and there is an executive committee elected by the National Congress. Discipline is strict, and the party faithfully reflects the views expressed by the makers of Communist opinion in Moscow.

### **The Two-Party System**

Parties rise and fall ; party leaders give way to new men ; but the two-party system seems to have become a permanent feature of British politics. The system is therefore to be distinguished from the multi-party government of France and the one-party government of the U.S.S.R. In essentials the American and British systems are alike and grew from the same seed. While the American colonists were in allegiance to the English King there were Whigs and Tories on both sides of the water. The old names and the old policies melted away, but the new parties perpetuated the traditional conflict of two principal organisations battling for the complete control of government. In the U.S.A., the crystallisation process resulted in the Democratic and Republican parties. In Britain, Liberals and Conservatives were the corresponding elements in parties during the nineteenth century. But in the twentieth century, the Liberal party fell back and the Labour party took its place. In 1945 Labour had a large majority over all other parties combined. In 1950, Labour was again successful, but with a small majority. Nevertheless the view prevailed that freak votes against the Government should not lead to a dissolution.

The advantages of a two-party system are difficult to assess. But it appears that the system contributes to stability and strength. A Prime Minister can choose his Ministers without having to consider the tiresome susceptibilities of minority

parties. Given a satisfactory majority for the party he represents, a Prime Minister can look forward to a reasonable term of office for his government. He can, with his colleagues, plan and carry through considerable measures of reform. The electors can judge the party's worth by the measures undertaken, whereas with a multi-party system, it is difficult to give credit or blame to any particular party. One-party government has the obvious defect that vigorous criticism is missing from public debates. The citizen has one point of view given to him without the argument on the other side. In such conditions, democracy is a withered plant.

Much discussion has centred round the question whether Proportional Representation would destroy the two-party system. In the United Kingdom the most widely supported form of P.R. is the Single Transferable Vote. Under this system, there are multi-member constituencies, and voters indicate their preferences by the use of numbers. A candidate is declared elected if he secures, on the first count, one or more votes in excess of the quota. The quota is the total number of first preferences, divided by one more than the number of places to be filled. The voting papers in excess of a candidate's requirement for election are used to help in determining the position of other candidates, whose success depends on exceeding a quota derived from utilising second preferences in the excess voting papers as well as first preferences determined on the first count. The process of transferring votes goes on until all the allotted seats are filled. Under this system, candidates may secure election on the strength of third or fourth preferences. Experience in other countries is not altogether a safe guide about what would happen here, since other conditions are so different. One thing alone appears certain: minorities would secure stronger representation in Parliament. But a mechanical change in the representative system would probably not alter it radically either for better or for worse.

## CHAPTER III

### THE CROWN AND PARLIAMENT

#### **The Crown and the Constitution**

The Queen has a kind of dual personality. As a human being, she has property and income. Crown revenue, however, though collected in the name of the Queen is not devoted to her personal use but is for the service of the community. Again, the Queen has her personal servants who do the work of her household, but there are thousands of Crown servants who do no personal service for Her Majesty, but are in the fullest sense the servants of the State. The Queen has personal plans which, in the intervals of a busy official life, she endeavours to carry out. But the plans of the Government are hardly in any way related to the personal life of the monarch. The policy which the Queen announces in speeches from the throne is not her own personal policy, but that of her Ministers.

By a gradual process, the monarch came to hold a position of influence rather than authority in the realm. He remained the official head of government, his assent was necessary before parliamentary bills acquire force of law, and he was formally responsible for declarations of war against other countries. But in time the formal position grew to be quite different from the actual position. In the Middle Ages the King was the fountain-head of government. His councillors were primarily to advise him, not to direct him. Upon him lay the burden of responsibility for action.

*"We must bear all. O hard condition,  
Twin-born with greatness, subject to the breath  
Of every fool, whose sense no more can feel  
But his own wringing! —"*

Henry V's soliloquy in Shakespeare's play describes the bitter complaint of a King weighted down by obligations to men who

for their part had no conception of the sleepless nights spent by their ruler.

Very slowly this weight was lifted from the shoulders of the monarch, but so far from being happy to cast the burden aside, the King as a rule resented the loss of power and struggled to retain or even increase it. In this connection, the Revolution of 1688 had a decisive influence in removing from the Crown the powers by which he could have extinguished Parliament or have made the courts of law the tools of royal policy. For a long time the Crown continued to exercise a great deal of power, but this was carefully circumscribed. The King was now in an enclosure which was from time to time reduced in size until the real authority of the King became far less than that of his "servants." As he felt the net closing around him, George III struggled against his captors, but failed. Queen Victoria refused to give in to the new forces without a real effort to assert herself. But she was compelled by circumstances to appoint Ministers whom she personally disliked, and in the end she became a "constitutional monarch" in the twentieth-century sense of the phrase.

The present-day position of the Crown in the constitution is capable of brief definition. Monarchs are entitled to be informed of what is proposed and what is happening in the State, but they are not entitled to use their prerogative except on the advice of Ministers whose appointment and tenure of office depends on existing law and convention. The law itself is not in this matter a hard taskmaster, but conventions are such that the discretionary power of the Crown has been reduced to a minimum. Almost every eventuality is covered by some convention, and the monarch can therefore do little more than suggest, warn, persuade, and help. Responsibility for action lies elsewhere.

### **The Title to the Throne**

The Queen is descended from Sophia, Electress of Hanover, who was named in the Act of Settlement, 1701, as the next in succession to Anne, if the latter had no heirs. As it turned out, all her numerous progeny died when they were very young, and George I came to the throne because he was Sophia's

son. Subsequent holders of the royal title have held their position according to the rules laid down by the Act of 1701.

This settlement was the result of a long conflict between two principles: first that the King should be elected by a representative assembly; secondly, that the Crown, like other forms of inheritance, belongs to a particular family. In pre-Conquest times the choice of a king was made by the Witan, but the choice was in fact restricted to members of the royal family. After the Conquest, the elective element in Kingship became less important, though there were occasional fierce disputes arising from a refusal to pay allegiance to an unpopular or incompetent candidate for the throne. Primogeniture came to be gradually accepted, but the Kingship was so important that heredity was never allowed to constitute an absolute title. When the hereditary position was doubtful, the ruler secured Parliamentary sanction. This did not make Parliament the determining factor, but it set the seal upon the royal claim and provided him with a show of national support. Henry VII secured Parliamentary approval for his position, and Henry VIII made his succession arrangements secure by Act of Parliament. Under the Stuarts there was a clash between King and Parliament, the King claiming to rule by divine hereditary right, and Parliament asserting that the King held his office by the "will of the people."

The Revolution of 1688 marked the victory of Parliament over the Crown in the contest for power, and, among other things, established the right of Parliament to determine the succession. In law, this meant that the Commons and Lords could lay down provisions relating to the royal succession and tenure of office so long as the King then living agreed to the provisions. The Bill of Rights provided that the monarch should not be a Roman Catholic; and the Act of Settlement provided that he should be a communicant of the Anglican Church. In accordance with the Revolution Settlement, the King was required to declare formally against transubstantiation, but by the Accession Declaration Act, 1910, he is merely required to state that he is a "faithful Protestant" and will uphold the Protestant succession.

The Acts of Union with Scotland, 1707, and Ireland, 1800, provided that the succession should be governed by the Act of Settlement. The Irish Treaty, 1921, confirmed by the Irish Free State Agreement Act, 1922, provided that the Irish Free State (later Eire) should have the same relations with the Crown as the Dominion of Canada. As far as the succession is concerned, this meant that the Act of Settlement should be followed in exactly the same way as it is followed in the United Kingdom. The position for Australia and New Zealand (and other Commonwealth member countries which continue to owe formal allegiance to the Crown) is the same. The Parliament of Northern Ireland cannot legislate on the Crown, but must accept the rules and usages prevailing in England. As far as Eire is concerned, the final severance of ties with the Crown, which came into effect in April 1949, established full republican status and made obsolete all succession rules in regard to that country.

By the Royal Marriage Act, 1772, the monarch's consent is required for the marriage of any descendant of George II, except in the case of issue of princesses married to foreigners. If over twenty-five, a descendant of George II can marry without consent after giving twelve months' notice to the Privy Council, provided Parliament does not disapprove. Unless these conditions are observed, the children of the union are not eligible to succeed to the throne.

The monarch cannot abdicate of his own free will. In December 1936, King Edward VIII was able to abdicate only after the passing of the Abdication Act. Not until then could his successor be accepted as George VI. The South African Government held that the instrument of abdication was adequate without an Act of Parliament. But the Government of the United Kingdom held the contrary view. Both governments, however, agreed that legislation was necessary to exclude possible issue of Edward VIII from the throne.

### **Regency**

There are three eventualities in which regency arrangements are necessary: infancy, illness, and absence. Provision



for these eventualities has been made when the need has arisen.

Difficulties arose in 1788 when George III was certified as suffering from lunacy. Pitt, who was Prime Minister, and Fox, who was the Leader of the Opposition, agreed on the need for a regency, but differed on the procedure that ought to be followed. The Opposition held that the Prince of Wales should be regarded as having the right to office, and that Parliament, by an Address, should merely ask him to assume office. The Government urged the need for an Act of Parliament on the ground that the Prince of Wales was not automatically entitled to the position of regent. This procedure was desired mainly to give Parliament an opportunity of imposing restrictions on the power of the regent. In the end it was decided to follow Pitt's plan, but the difficulty was that the King's assent was necessary to an Act of Parliament. To get over this difficulty it was decided to proceed by resolution of both Houses authorising the Lord Chancellor to affix the Great Seal to a Commission for the purpose of giving the royal assent to the necessary Bill. As it happened, the King recovered before this procedure had been carried into effect, but in 1810, when the King was mentally indisposed a second time, Pitt's plan was followed. A resolution of both Houses authorised the affixing of the Great Seal to a Commission for opening Parliament, and then to a Commission for giving assent to the Regency Bill.

In 1910 a Regency Act provided that the Queen should be regent in the event of the successor to the throne being under eighteen years of age. The regent was debarred from giving the royal assent to any Bill for changing the succession or repealing the Scottish Act, 1707, by which the Protestant religion was secured.

When George V was ill in 1928, a Council of State was appointed, comprising the Queen, the Prince of Wales, the Duke of York, the Archbishop of Canterbury, and the Prime Minister. They were authorised to call meetings of the Privy Council and to sign documents on behalf of the King, but they might not dissolve Parliament, create peers, or take any action which they had reason to believe the King would

disapprove. The Council was created by a Commission under the Great Seal. With the consent of the King, it created a form of Regency Council.

By the Regency Act, 1937, it is provided that the person next in succession to the throne should be regent if the monarch is under eighteen years of age, or is mentally or physically ill. In the event of the monarch's or regent's illness or absence, certain formal powers of the Crown may be delegated to a Council of State, comprising the wife or husband of the monarch or regent, and the four people next in succession to the throne, exclusive of the possible regent, if the illness or absence is that of the monarch. In 1953 statutory provision was made for the Duke of Edinburgh to act as regent in the event of Elizabeth II's death before the heir was eighteen years old; and also for the Queen Mother to act as a Counsellor of State should a Council of State be needed.

### **Allegiance and Treason**

Allegiance is the duty of being faithful to the monarch. This is a duty laid upon both British subjects and aliens alike so long as they reside on territory over which the Queen exercises authority. In the case of De Jager, who was an alien accused of joining the Boers in war against Britain, the Lord Chancellor said: "It is an old law that an alien resident within British territory owes allegiance to the Crown and may be indicted for high treason, though not a subject." On leaving British territory, an alien is immediately freed from allegiance but a British subject remains under the same obligation as before. A British subject can, however, acquire the nationality of another country in accordance with the laws governing naturalisation (1914-22), whereupon he acquires the status of an alien, but his acquisition of foreign nationality on the eve of, or during, a war will not prevent him, if captured, from being charged with offences in the same way as if he had been a British subject.

An alien can become a British subject in much the same way as a British subject may become an alien. The chief qualifications are five years' residence on British territory and evidence that the applicant has a law-abiding character.

During the Second World War, and until 1947, the usual qualifications for securing British citizenship were suspended.

The Home Secretary has considerable powers to prevent British subjects from going abroad and to restrict the entry of aliens into Britain. Visiting aliens are normally required not to undertake any work for which remuneration is made either directly or indirectly, but exceptions are made under certain circumstances. Aliens capable of qualifying for British citizenship are therefore very limited in numbers.

Treason is the violation of allegiance owed either by subjects or aliens. The Treason Act of 1351 provides the death penalty for "compassing or imagining the King's death," "levying war against the King in his realm," and "adhering to the King's enemies in his realm." These three forms of treason have been judicially interpreted to cover open intention to depose the King, and insurrection against the Government. Sir Roger Casement was convicted in spite of the plea that his actions in Germany during the First World War were not against the King "in his realm." William Joyce, in 1945, pleaded that he was not a British subject at the time of his alleged treason in assisting the Germans by propaganda during the Second World War. But he was nevertheless convicted, the argument being that he had used a British passport for his own benefit and must suffer for offences committed while he posed as British.

Attacks upon the person of the reigning monarch normally constitute treason, but an Act of 1842 enables less serious outrages to be treated as felonies. An Act of 1848 enables certain offences against the State (*e.g.* conspiracy to wage war and incitement of foreigners to invade the Kingdom) to be treated in a similar way, thus avoiding the notoriety of a treason trial. Attempts to "alarm" the King, as in the case of MacMahon and Edward VIII, are punishable, but not by death, and do not constitute high treason.

### **The Prerogative**

The Prerogative consists of all those powers and privileges which the Crown possesses by virtue of Common Law, that is to say by virtue of the ancient custom of the country.

These powers and privileges have been gradually reduced over many centuries as a result of the conflict between the Crown and other competing authorities in the State. The Crown also possesses powers conferred by Statutes, and both kinds of power are in fact exercised by Ministers of the Crown. The distinction between prerogative and statutory powers is still important, though the difference becomes increasingly academic.

Among the many prerogative powers which can be exercised by the Crown are the right to summon, prorogue, or dismiss Parliament, to disband the Armed Forces, to make peace and war, to create peers, and to pardon criminals. These powers are usually exercised on the advice of Ministers, whose tenure of office depends on Parliament. They cannot be exercised against the determined will of Parliament, though they may be exercised without express Parliamentary sanction. Any attempt to use these prerogatives to supersede Parliamentary authority would be a failure in view of the vigilance which Parliament exercises and the conventions which have arisen to govern the use of prerogative powers. In concluding treaties of peace, for example, the Crown is bound by the convention that formal ratification shall be preceded by Parliamentary discussion; and a further restriction arises from the legal necessity that no treaty shall, of itself, impose a charge on the country or make any change in existing law.

Decisions in regard to the correctness or otherwise of the use of prerogative powers have been made by the courts. Thus, it has been established that in any "colony" for which an independent legislature has been established, the Crown has no right to create any ecclesiastical corporation which the colony must recognise. Again, the Crown cannot create life peerages by prerogative, although this was done in the Middle Ages. This power has been lost by four centuries of disuse, and it is now exercisable only as a result of statute. The Crown, again, has no right to levy money without consent of Parliament, even though such levy is the outcome of an express agreement between the Crown and another body. Finally, in cases where prerogative powers and statutory

powers cover the same field, the Crown is presumed to act under statutory authority and not under prerogative.

### **Duties of the Monarch**

The Queen has certain formal duties which she must perform. Her writ is necessary for summoning Parliament, and she usually appears in person at the opening of a session. Until the Revolution of 1688 the death of the Sovereign automatically dissolved Parliament, but by statutes subsequent to that date, Parliament was able to continue for six months after the death of a monarch, unless prorogued or dismissed by the new ruler. By the Representation of the People Act, 1867, the duration of Parliament is independent of the death of the monarch. The Queen has an important part to play as one of the legislative triumvirate. All Bills are presented to her for her consideration, though her veto is no longer used, nor do the legislative proposals which she suggests in the Queen's Speech emanate from her personally. Nevertheless, her participation in this work provides her with a background of knowledge which is invaluable to the country.

The royal duties in regard to the executive side of government are considerable. Her most important task is to choose the Prime Minister. This is usually an acknowledged party leader. In the case of the Labour party, the man expected to be Prime Minister is clearly marked out for the honour. In the case of the Conservative party the position is not always the same. A retiring Prime Minister is usually consulted; and other statesmen may be asked for their opinion, as seems to have been the case when Chamberlain took over from Baldwin in 1937. In 1940 the Labour party indicated its readiness to serve in a coalition Government, but only under Churchill.

In times of crisis it is conceivable that the monarch may be called upon to exercise some personal discretion. Circumstances may arise in which the nomination of a Prime Minister or the timing of a dissolution of Parliament cannot be determined on the basis of existing conventions. In 1859, when Lord Derby resigned, Queen Victoria passed over the

claims of Palmerston and Russell, and asked Granville to be Prime Minister. But he could not form a Government, and Palmerston was appointed. George V had a choice of Lord Curzon or Baldwin in 1923, but the King's share in personally determining that Baldwin should lead is uncertain. In 1957 the Queen chose Mr. Macmillan, not Mr. Butler, but in so doing accepted the advice of elder statesmen, like Salisbury and Churchill.

In regard to dissolution, Queen Victoria believed strongly in her right to dissolve and test the feeling of the country. Asquith, however, declared during the controversy over the Parliament Act, 1911, that if the Parliament Bill did not pass he would resign or recommend dissolution. "Let me add this, that in no case will we recommend dissolution except under such conditions as will secure that, in the new Parliament, the judgment of the people, as expressed at the election, will be carried into law." This seemed to imply that the consent of the monarch was taken for granted. In 1924 Ramsay MacDonald openly threatened the Commons with a dissolution, although he led a minority party in Parliament. The threat was carried into effect. In this case, however, Asquith held that the monarch would have been entitled to refuse a dissolution. In 1950, when the Labour party were in power with a slender majority, L. S. Amery and Lord Simon held that the King was entitled to his discretion over dissolution; but this view was strongly challenged, seeing that over a century had elapsed since a monarch had refused a request to dissolve. The right to refuse dissolution must therefore be regarded as very much circumscribed, if not obsolete.

The monarch has many formal political duties. Orders-in-Council cannot be authorised except in the royal presence, and the Privy Council cannot meet except under the royal presidency (with the one exception of a meeting prior to the proclamation of a new ruler). The monarch hands the seals of office to the Lord Chancellor and Secretaries of State. Prime Ministers, when vacating office, offer their resignation to the monarch. Conventions govern all these acts, so that the monarch's discretionary power is slight. But, as Bagehot said, the ruler has "the right to be consulted, the right to encourage,

and the right to warn." Under a vigorous monarch this is a matter of real moment.

Beyond these formal duties of the Crown are social obligations which put a heavy burden on the physical capacity and patience of the Queen. She is expected to appear at numerous events of national importance, such as agricultural shows, sports events, and religious ceremonies. In her role as Head of the Commonwealth the Queen has undertaken numerous Commonwealth tours, as well as paying State visits to foreign countries. Following on the tradition created by her grandfather, George V, the Queen broadcasts each Christmas a message to the Commonwealth, which is now televised. In her social roles the Queen receives valuable assistance from other members of the royal family.

These activities keep the ruler very much in the public eye. Her private life is the subject of careful scrutiny so that any deviation from conventional standards meets with sharp criticism. The ruler is looked upon as an example to her subjects. The average citizen thinks of the Queen as somewhat above the petty prejudices and cheap temptations of ordinary life. It is a duty of the ruler to fulfil to the utmost of her ability the expectations of her people. A high standard of family life is a *sine qua non* if the monarch is to secure general respect. Her family live in the glare of publicity, giving the Queen a responsibility not merely for her own conduct but for that of her children.

Ancient powers have withered away, leaving little behind except the dead branches of formal responsibility for State policy; but the monarch's duties have become more onerous in the social sense, and her character is expected to "shine like a candle in a naughty world."

### **The Development of Parliament**

The origins of Parliament are to be found in the days before the Norman Conquest. To advise him on the government of the country, the King summoned such laymen and ecclesiastics as he thought would help him faithfully in his task. The Witan or assembly of wise men was the distant ancestor of present-day Parliament. But the conception of

law was different from what it is to-day. Law was for the most part regarded as "good customs." The Witan was to assist in keeping the law rather than in creating new legislation.

After 1066 the central assembly changed in character, but the Norman kings retained some features of Saxon life. The King's Court was an amalgam of Continental feudal practice and Anglo-Saxon usage. William the Conqueror summoned his principal tenants on occasion to a meeting in full council, and they were expected to do their duty by pledging help in times of crisis. This was part of their feudal obligation, in many cases involving tiresome journeys and burdensome promises. But the King insisted on it. In time the practice grew up of summoning the more important landholders by special writ, the lesser ones by general writ. Those who were summoned by special writ had to attend, but a general writ provided an excuse for absence. By the time of Magna Carta, men were not merely summoned at the whim of the Crown, but it was laid down that archbishops, bishops, and greater barons should be given an individual summons. Already what had been a burdensome duty had become a valuable opportunity. The greater barons and the archbishops and bishops met to "shackle" the King rather than to help him. Their interest was not to set up a strong central government, but to insist on their feudal privileges. Yet to make this gesture they had to set up a central committee designed to keep the King in check and compel him to observe established custom. Under cover of interpreting the law, the King had in fact been busy with innovations. The old order was changing, yielding place to a new order which threatened the status, power, and wealth, of the nobility and of the episcopate.

To strengthen his hand, Edward I adopted a device by which the middle groups of society might be played against barons and ecclesiastics. The idea was foreshadowed in Simon de Montfort's scheme for securing help from knights and burgesses to bolster himself against the barons who, having deserted his cause, had turned to the support of Henry III. When Henry was dead, Edward used the new plan with the



opposite object: to strengthen the Crown, not to weaken it. But he found that knights and burgesses were inclined to regard attendance at the King's Council as a burden, just as the great barons had felt it burdensome in an earlier period. In the fourteenth century, the borough of Torrington successfully asked to be relieved from sending burgesses to Parliament, and two Oxfordshire knights fled the country rather than serve as representatives of the shire. Even at this late time some of the peers had to be threatened with penalties for not appearing in Parliament. Two centuries later, members of the Commons were still prone to slip away home before the business of the session was completed.

With the growing activity of the King-in-Council-in-Parliament, membership gradually ceased to be a burden and became a privilege. The reigns of Tudor and Stuart monarchs were a period of transition in this respect. Parliament, which had been mainly an advisory body (with the brief exception of the Lancastrian interlude of the fifteenth century), became a competitor for power. By this time feudal society had almost broken up. Legislation was clearly not a mere application of custom to new problems. Ideas of Divine Right were expounded, new claims were advanced, and precedents were often no more than pretexts. Under James I, Parliament was no longer the amicable helpmate but the frustrated partner. Under Charles I, when co-operation was no longer possible, Parliament divided, so that some followed the King while the rest of Parliament blew upon the trumpet of rebellion. Out of this clash came a brief republican experiment, which altogether failed and the monarchy was restored. But Parliament was also restored, and gradually established a paramountcy which led, in the eighteenth century, to the acceptance of Parliamentary sovereignty.

### **The House of Lords**

The feudal council of tenants-in-chief was the parent of the present Second Chamber. But not all the direct descendants of those who sat in the Great Council of the Norman Kings can claim the right to sit in the House of Lords. During

a period of over two hundred years the lesser tenants-in-chief dropped out, while the greater tenants, summoned individually and by name, were required to obey the royal summons and tender their help. In 1295 Edward I summoned the famous "Model Parliament," in which were represented the three "estates of the realm"—clergy, nobility, and commons. But the clergy who attended did so rather in their capacity as landholders than as ecclesiastics, and the practice grew up of regarding the "lords spiritual and temporal" as a unit, while the commons, at first a comparatively unimportant element, remained outside this charmed circle. Men who can prove direct descent from any of the lay tenants-in-chief who were summoned to Edward I's Parliament can now claim the right to sit in the House of Lords. All subsequent "new men" summoned in a similar capacity to any later Parliament also transmit to their heirs the right to be peers of the realm. The creation of an hereditary peerage of the United Kingdom carries automatically the right of the holder of the title to receive a summons to meetings of the House of Lords.

Membership of the Lords, until 1958 confined to men, is based on one of four considerations: heredity; creation; official right; election. The bulk of peers at any one moment are there because of their ancestry. They are normally the eldest surviving sons of former peers. A considerable number of peers are created in any one generation, but these creations are limited in number. The Monarch can elevate to the peerage as many persons as it is thought desirable to honour in this way. Creations were few until the seventeenth century, when the numbers began to rise. Under George III there were over three hundred creations, and almost the same number under Victoria. Spiritual peers are members by virtue of their position in the Church. Lords of Appeal in Ordinary (the Law Lords), who are life peers, retain membership of the House of Lords even after resigning from their official positions. All peerages of the United Kingdom carry a seat in the House of Lords, but Scottish and Irish peers are not *ipso facto* members of the House. Such Irish peers as were entitled to a seat were elected for life, and Scottish peers are elected for the duration of Parliament. Since 1920, Irish

peers have not chosen any more members to sit in the House (the last one died in 1961), but Scottish peers continue to elect their quota on each appropriate occasion.

The House of Lords is theoretically equal in status to the Commons and to the Crown in the legislative triumvirate. As late as the eighteenth century, the Lords were, in practice, very powerful, and able to check either of the other two partners. But in the nineteenth century the power of the Lords declined, though the process of decline was slow. This was partly because the Lords challenged the Commons on issues where the national will was evenly divided, such as Home Rule for Ireland in Gladstone's day. In the end, however, the power of the Lords ebbed away. By the Parliament Act, 1911, the House of Lords was deprived of power over Money Bills, and restricted in other cases to delaying-power for two years. By an Act passed in 1949, delaying-power is reduced to one year. But the high talents and wide experience of many members of the House of Lords still make the work of the peerage a valuable asset to the Government. Especially on complicated issues of finance (as in the Companies Bill, 1947) or broad issues of educational interest (as in the Education Bill, 1944), the Lords can make useful and constructive suggestions. By the Ministers of the Crown Act, 1937, at least three Ministers of high rank out of a list of seventeen specified Ministers must be chosen from the House of Lords. This points to a recognition of the House of Lords as an essential and permanent element in the constitution, though with a different role from that formerly enjoyed by the House. Leaders of all parties have spoken highly of the skilled advice which the Lords can give.

From the point of view of the House as a whole, appellate jurisdiction is unimportant, since it is a convention that none but peers learned in the law shall participate. But as a revising chamber the Lords plays an important part in law-making, in drawing attention to anomalies, and in throwing a searchlight on grievances. The Archbishop of York put the matter neatly in 1947 when he said: "This House enables the Government to do those things which it ought to have done elsewhere and to undo those things which it ought not

to have done." Radical reforms in the make-up of the House have been suggested, for example by Lord Bryce's Committee (1918), but these have all been shelved, and the Lords have gradually been changed in character by the introduction of new blood from the trade unions and the professions, while the functions of the Lords have slowly changed by law and convention so that they have become an advisory body. The introduction of women into the Lords in 1958, accompanied by an extension of the system of life peerages, may be a prelude to more radical reform.

### **The House of Commons**

The House of Commons arose out of constitutional experiments made in the thirteenth century. The King's Council was at times strengthened by the advice and help of knights and burgesses acting as representatives of boroughs and shires. But the knights and burgesses did not as a rule sit in the Council Chamber along with the magnates of the realm. They deliberated on their own and appointed a "speaker" who was in fact a royal nominee, to represent them in discussions with the King. For a time the name "Parliament" was given to "parleys" or discussions of the Crown, whether or not the Commons were present. The necessity for the presence of commoners in a properly constituted Parliament was, however, gradually accepted in the fourteenth and fifteenth centuries, and the Commons, who normally deliberated in the Chapter House of Westminster Abbey, came to regard this chamber as their "house." In the reign of Henry VIII full legal recognition was given to the House of Commons as an integral part of Parliament, but this was merely formal approval for a position already well established. From that time onwards the House of Commons has slowly risen to a dominant position in the legislature. Great commoners, like Pitt and Walpole in the eighteenth century, raised the prestige of the Commons, and in the nineteenth and twentieth centuries the House of Commons compelled the Lords to accept unpalatable measures of reform.

All British subjects, of either sex and from whatever part of the Commonwealth they may come, may be elected to

the House of Commons, provided they do not suffer from legal disqualifications. Seven classes of persons are ineligible to sit in the Commons. They are minors and lunatics ; bankrupts ; persons convicted of treason or felony, who have been sentenced to more than a year's imprisonment (until they have served their sentence or been pardoned) ; candidates guilty of corrupt practices ; clergy of the Church of England, the Church of Scotland, and the Roman Catholic Church ; peers (including those who do not wish to take their seat in the Lords), but not Irish peers nor peers' sons, who may hold courtesy titles but who have no seat in the Lords ; and the holders of certain offices under the Crown. In connection with the last disqualification, the position is that judges and high-ranking civil servants are excluded, but Ministers of the Crown may sit in the Commons. In accordance with the House of Commons Disqualification Act, 1957, many public servants, such as members of the boards of numerous public corporations and of a wide range of tribunals, are ineligible.

### **Duration and Meetings**

During the early years of the evolution of the legislature, Parliaments were summoned spasmodically and for special purposes. They had no part in the routine government of the country. A Parliament might be summoned for a few days or weeks and then dismissed. The same Parliament would not be summoned again. When the need arose once more for consultation with the lords and commons, new writs would be issued and different faces would appear in the council chamber. In the case of the lords, it soon became established that there were certain inheritances which carried with them the privilege (or otherwise) of being summoned to Parliament. But the King could, and did, summon "new men," and this right of creating peers is still a valuable part of the royal prerogative. Commoners, however, were not selected individually by the King, but were the choice of electors in shires and boroughs. When a new Parliament was summoned, new elections had to be held, and the burden of being representatives usually fell upon the shoulders of fresh

people. Right down to the seventeenth century, Parliaments were summoned very irregularly ; and, with a few exceptions, for short periods only. New legislation was rarely necessary, and it was only occasionally, as in the Reformation crisis, that Parliamentary approval had to be sought to ensure the country's support.

The Triennial Act of 1641 provided that Parliament should be summoned every third year, but this Act did not provide for new elections. Parliament could therefore be summoned, sent home again, asked to return, and so on. The "Long Parliament" endured from 1640 to 1660, and Charles II's "Cavalier Parliament" from 1661 to 1679. This practice of summoning a Parliament and allowing it to hold sessions, divided by prorogations, was in use as early as the reign of Richard II, but was not a matter greatly disliked until the Stuart period. In 1694 the problem of elections was tackled by Parliament, and the Triennial Act of that year insisted on elections at least once every three years. Until 1715 this rule worked satisfactorily, but on the death of Queen Anne the succession was in dispute, rebellion shook the country, and the statutory time for an election seemed particularly inappropriate. The Septennial Act, passed at this time, prolonged the life of Parliament to seven years and made elections compulsory for the future at least once every seven years. A modification of this rule occurred in 1911, when the maximum duration of a Parliament was altered to five years.

Parliament does not sit continuously during its whole life, the annual "sessions" being spaced out by prorogations unless interrupted by dissolution. Until the First World War, 1914-18, it was usual for each session to last from January (or sometimes February) to August. But in the stress of war it was felt that Parliament ought to sit for a longer period. This practice has been continued since, and is essential nowadays in view of the spate of Government business. The vast extension of Government activities, involved in the creation of the "Welfare State," has made the work of being an M.P. a full-time occupation. During sessions, Parliament adjourns from one day to another—as a rule,

though thirty-hour sittings are not unknown. There are, of course, gaps for recognised holiday periods and for week-ends. Parliament begins business rather late in the day, but often continues far into the night. The House of Commons has been much more addicted to midnight debates than the House of Lords, but in 1947 pressure of business drove the House of Lords to extend its debating time beyond the usual hours. When the number of members in the legislative chamber has dropped very low, the House of Commons may be "counted out." During the less important debates members have a habit of trickling away until a mere handful is left. It is then open to any member to raise the question whether there are less than forty members present. If there are less than forty, then the House is adjourned.

### **Tenure, Privileges, and Remuneration**

Members of the House of Lords hold their position on certain conditions. Bankruptcy and conviction for treason or felony bring about their exclusion from the House; and the Lords, sitting as a court of justice, can exclude any member for ever. A peer who refused to take the Parliamentary oath or alternative declaration would not be allowed to take his seat; and bishops who resign their sees must give way to the next holders of the see, or to the next bishops in order of seniority where the see itself does not carry the right to a permanent seat in the Lords. Members of the House of Commons are automatically excluded by convictions for bankruptcy or treason, by acceptance of certain offices under the Crown, by succeeding to a peerage carrying with it a right to a seat in the House of Lords, by naturalisation in a foreign country, and by lunacy, if persisting over six months. The House of Commons may expel a member, as in the case of John Wilkes in the eighteenth century, but he cannot be prevented from seeking re-election. All Commoners are, of course, compelled to vacate their seats on a dissolution of Parliament, but they cannot resign office. If a Commoner wishes to vacate his seat, his course is to accept a nominal office under the Crown, such as the stewardship of the Chiltern Hundreds. By this means he ceases to be a member

of the Commons; and he then resigns his nominal office so as to permit it to be taken by any other Commoner desiring to vacate his seat.

The chief privileges of the two Houses of Parliament are: freedom from arrest, freedom of speech, and freedom of procedure. Other less important privileges include the right of access to the Crown—individually by the Lords and collectively, through the "Speaker," by the Commons. Freedom from arrest originated to prevent the duly elected representative of a constituency from being deprived of representation, and is only effective so long as the House is sitting. It does not at any time cover indictable offences or contempt of court. "Freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." This was established by the Bill of Rights, 1689, and was by extension made to cover the publication of fair and accurate reports made outside Parliament. Freedom of procedure includes the right of each House to frame its own standing orders, and the right to alter these orders at will. "Breaches of privilege" are punishable by the Houses, which are courts of law for this purpose. Members and non-members may be punished for disrespect to the House, and non-members for disrespect to members. Interference with procedure, disobedience to orders of the House, and disrespect to officers carrying out their duties are also punishable. Punishment may be by censure (there being a distinction between contempt and gross contempt), or by imprisonment (an unusual punishment, which can be applied by the Commons only to take effect to the end of the session, but by the Lords for an indefinite period).

During the Middle Ages, members of Parliament were paid for their services by their constituencies, but, as the members came to regard their position as a privilege, payments fell into desuetude. The last M.P. to collect remuneration from his constituency was Andrew Marvell (the poet), who sat for Kingston-upon-Hull in the seventeenth century. With the growth of working-class representation, the need for payment of M.P.s became urgent. It was one of the planks of the Chartist platform in the 1830's and 1840's, but was not



pressed strongly until the twentieth century. In 1911 M.P.s were granted £400 a year and free rail travel between their constituencies and Westminster. After the First World War, 1914-18, the salary rose to £600, and in 1946 it was established that the salaries of members should be £1,000 a year, and from 1954 M.P.s could claim an extra allowance for each day Parliament was in session. Members of the House of Lords receive no salaries; but as a result of the work of Lord Rosebery in 1947, they received help over necessary travelling. Members of the Commons now receive £3,250 a year (£750 tax-free) and peers may claim a daily expense allowance.

### **Functions of Parliament**

Parliament, and more particularly the House of Commons, has a fourfold duty: (1) to sustain an administration so that the Monarch's government can be carried on; (2) to watch over the executive and judiciary; (3) to hold the purse of the nation; and (4) to make laws which officials shall administer in their offices and judges shall accept in their courts.

It is an accepted rule that M.P.s shall do nothing to bring the system of government into disrepute. The Government's policy may be condemned, but M.P.s must not incite anyone to disobey the law.

Members of Parliament should be always on the alert. Points made in debate indicate the strength of a Minister's position, whatever the result of a division may be. The upshot may be a reshuffle of the Cabinet, achieved by criticism which prompts a Prime Minister to see the warning light before it is too late to avoid a disaster for the whole Government. Besides motions, questions are used with devastating effect. These cover any sort of issue in which governing bodies are concerned, from untoward decisions of Justices of the Peace to the expenses incurred by Ministers visiting other countries. Such revelations as occur receive ample publicity, they act as a restraining influence on all public authority, and are a potent means of checking abuses. Questions down on the order paper are provided in advance and are easy to deal

with, but supplementary questions on the spot provide a real test of the capacity of Ministers and their Parliamentary Secretaries; and the further revelations in these questions, suddenly hurled at the Speaker (to whom all remarks must be addressed), adds value to the work of Parliament. A Minister may, however, refuse to answer a supplementary question on the ground that he has not had notice of it, and may refuse to answer any question if "it is not in the public interest to do so." But the House sees to it that this procedure is not abused.

The Commons discuss each Department's estimates in Committee of Supply before these are approved, and are assisted in their work by the Select Committee on Estimates. Care is also taken over appropriation. A resolution in the Committee of Ways and Means must be passed before the Appropriation Bill is introduced. This authorises payment out of the Consolidated Fund which is held by the Government at the Bank of England. The Comptroller and Auditor-General supervises all payments into and out of this fund, and he in turn is responsible for the national accounts which are dealt with in the first place by the Public Accounts Committee. It is true that this committee procedure does not lend itself to the painstaking supervision of accounts which was the hope of those who helped to fashion the organisation of Parliamentary control. Votes of credit, involving millions, go through with very perfunctory examination, and details are in fact the business of Treasury officials and the various spending Departments. But Parliament is watchful for scandals, and the well-tried technique of question and answer is always available for throwing light on Government errors.

The making of law is the fourth principal function of Parliament. Vast schemes have been evolved here for the maintenance of order, the control of production, and the welfare of the community. In few places are the general principles so carefully considered or statutes so well framed as by the Parliament in Westminster.

## CHAPTER IV

### LEGISLATION

#### **The System of Law**

A great part of English law is customary. It was never enacted that murder was a punishable offence, or that theft would be penalised. Law consists, in fundamentals, of rules which grew up with society and were enforced as part of the framework which held society together. In Anglo-Saxon times, Kings like Alfred issued codes of law, but their purpose was to declare and to define them rather than to make new law. In practice, the declaration of law involved creation, at first in a minor and later in a major degree. In course of time Parliament, which began fundamentally as an advisory and judicial body concerned with financial affairs and with the settlement of disputes at the highest level, became a body primarily, but by no means wholly, concerned with legislation. But though statutes, which are the enactments approved by King, Lords, and Commons, became the over-riding law, a vast body of law continued in existence which Parliament never destroyed. To this body of law, appeal continues to be made. It provides a thread of continuity with early society, unbroken despite civil wars and bloodless revolutions.

This law, out of which Parliamentary legislation has itself arisen to usurp the primacy of customary law, has been modified to meet changing circumstances not merely by Parliament, but by innumerable judges. The judgments they have given in accordance with their interpretation of the law form a great body of Case Law. Subject to certain qualifications, precedents are binding upon those who deliver judgments at a later date. The two major qualifications are changes resulting from the application of Equity, and changes resulting from Parliamentary enactments. Equity is a form of judge-made law applied by the Court of Chancery from the fourteenth century onwards. It was designed to provide

more equitable decisions than were provided by the inelastic Common Law Courts, which applied rules and precedents without proper consideration for "natural justice." Failure to follow the exact procedure laid down by Common Law might put an otherwise sound claimant "out of court." This, however, might be corrected by an appeal to the Lord Chancellor, "the Keeper of the King's Conscience." Equity was applied only in certain types of civil jurisdiction, principally concerned with trusts and trustees—cases in which property was bequeathed for the advantage of certain individuals but administered by others.

Law in England means then: first the Common Law, with its origins lost in the mists of antiquity but itself preserved and modified by the Common Law Courts from the eleventh century onwards; secondly Equity, which is a species of law, also based on judicial decisions and deriving from the application of principles of natural justice, to remove hardships which would arise from the application of Common Law. Thirdly, there is Statute, which began as a clarification of customary law and an application of it to new circumstances, but has become, since the eighteenth century, the supreme law which the courts must apply against any other rules, however ancient their lineage; and fourthly, there is Administrative Law, consisting of a great mass of orders issued by Departments of State, nominally based in the main on Statute, but in fact derived from Departmental policy.

### Statutes

Statutes, the supreme form of law, derive their political authority from the electorate, working through the party system. But the courts of law are not concerned with this aspect, and the King-in-Parliament may take decisions quite at variance with the expressed wishes of the electorate. The courts are concerned with the question of interpreting Statutes, not of considering their ultimate derivation. So long as a Statute is in proper form and is not invalidated by any later Statute, it will be applied by the Courts of Law. Medieval Statutes were issued at the instance of the Crown, supported by the authority of the Council, sometimes with and sometimes

without the assent of the Commons. But the fourteenth century saw a considerable increase in the use of the Commons, and the rule came gradually thereafter to be established that Statutes required the majority support of Lords and Commons, together with the assent of the King. The ceremony which gives the final hall-mark of approval to a Bill involves the Speaker's coming to the House of Lords to hear the words of royal approval. Here, in legal theory, is the full assembly of Parliament, as it was hundreds of years ago. But the real importance of the Commons makes the final ceremony an interesting formality and nothing more.

Statutes may be variously classified. There is a significant difference between Private Bills and Public Bills. The former are concerned with the affairs either of a small area within the whole area of Parliamentary authority or of a few people out of the whole body of the Queen's subjects. Public Bills are concerned with a major area like England or Scotland, or with larger areas still. They affect major sections or all of the Queen's subjects. The procedure is different in each case, Public Bills being those which occupy most of the legislating time of Parliament and which attract the bulk of popular attention.

Public Bills in turn can be classified as Money Bills and other Public Bills. New forms of taxation, the remission of existing taxation, the appropriation of revenue, and other matters concerned with finance must be put in the form of Money Bills. Substantial changes in the financial system are proposed by the Government of the day, ordinary members adding suggestions and providing criticism before the final stage is reached.

Other Public Bills, not primarily concerned with finance, may be proposed by the Government or by private members. Government-sponsored Public Bills occupy the bulk of parliamentary time, and private members have relatively small opportunity of securing a hearing for their proposals.

### **Private Members' Bills**

In legal theory, any member of Parliament has the right to introduce Bills and to have them printed at the public

expense. The Bills have inscribed on the back the names of the sponsor and of his supporters. Copies may be distributed locally as well as in Parliament, so that electors as well as members are acquainted with the proposals. The conventional time allotted to private members' Bills is Friday afternoons. Attendance has often been sparse on these occasions, many M.P.s having decided to take long week-ends away from Parliament. The established practice to obtain a hearing is for members to ballot for the right to obtain portions of this time for their proposals. Cards are put in a box, and the Clerk of the House draws at random from the box. The first to be drawn receives the right to the first Friday available, and so on until the available Fridays are filled. But this opportunity for private members was restricted during the war periods, and the post-war programme of the Government after the Second World War led to a suspension of the right to introduce private members' Bills in the Commons. Sir Alan Herbert, always a valiant framer of Bills, finding no opportunity in 1947 to use the privilege of introducing a Bill, brought in a bundle of his proposals and threw them with a theatrical gesture on the floor of the House. The privilege of introducing such Bills was restored in 1949, and the normal procedure now seems to be to make private members' Bills alternate with private members' Motions on Fridays.

Two main advantages have come out of the allotment of times of private members' Bills. In a few, though admittedly a very few cases, the Bills have become law. The outstanding example of persistence and success was that of Sir Alan Herbert who worked doggedly on divorce reform until a major change was effected. As a result it is no longer necessary to make a pretence that adultery has been committed. A divorce can be obtained on grounds of persistent cruelty alone. The second principal advantage of private members' Bills is that they provide a much-needed opportunity for revealing abuses. Even where Bills never get beyond the preliminary stages, they often receive considerable publicity and pave the way for reforms at a later date. The House of Lords, in which opportunities for private members' Bills are more plentiful, is a sounding board for grievances. A

development since the Second World War has been for the Government to support the main objective of a particular Bill, and then frame a Government-sponsored Bill to deal with the subject on which the private member has focused attention. Under such circumstances, the original Bill is dropped. But many Bills succeed on their own merits, such as the Offices Bill and the Clean Rivers Bill, both of which were passed in 1960.

### **The Stages of a Bill**

Each Bill presented to Parliament has to go through eleven stages before it becomes the law of the land.

Assuming that the Bill is introduced in the House of Commons, which is the usual procedure for Government Bills, there is a first reading, which is a very formal step. This involves the presentation of a paper, blank except for the title of the Bill. There may or may not be a short speech by the sponsor. If there is a speech, it is limited to ten minutes. Only one speech is allowed in reply, and courtesy requires it to be brief. The first reading means little more than an expression of willingness to give consideration to the proposal.

The second reading of the Bill is formal, with set speeches on both sides. The Bill is presented in full, but it may not be altered. Detailed criticism comes later.

Next comes the Committee stage. This is the work of the whole House sitting in committee or of a standing committee representative as nearly as may be of the party grouping in the House. Each clause is dealt with.

The Report of the Committee comes next. The clauses are re-examined, new clauses added, and amendments made.

After this comes the third reading, which resembles the second in that no alteration of clauses is possible. The Bill is accepted or rejected as a whole.

In the House of Lords the same procedure is followed: a first reading, then a second reading, followed by a Committee and Report stage, and ending with a third reading.

After these vicissitudes, the Bill is ready for the royal assent. In legal theory, the Queen's representative may refuse

the Bill with the words: "*La Reine s'avisera* (The Queen will consider the matter)." In practice, the veto is dead, and the words, "*La Reine le veut*," signify the royal acceptance of Bills which have reached this eleventh stage on their way to formal enactment.

### **Committee Procedure**

Between the second and third readings of a Bill is the Committee stage. Here the hard work is done, clauses being dealt with in detail. It is still possible to have the whole House of Commons turned into Committee by appointing a chairman (the Deputy Speaker) to take charge of the proceedings instead of the Speaker, who is the presiding officer when the House of Commons is sitting in Parliament. But modern practice involves the creation of several standing committees, chosen so that the ratio of party members on each committee is the same as for the whole House. These committees begin work in the morning (in practice, Tuesdays and Thursdays) before the House of Commons is officially open. A chairman is appointed for each committee, and committee rooms are used instead of the debating chamber. Thus, five or six Bills may be under consideration in different committees at any given moment. At one time there was little Press attention given to these proceedings, but the magnitude of recent changes has focused attention on committee work, and the solid speeches of an earlier period have tended to be embellished by more sparkle than hitherto.

Members of committees can move amendments to any line or clause in Bills. These may involve deletion, correction, or addition. The chairman limits discussion to the subject-matter in hand, irrelevance being firmly discouraged. The practice of moving amendments to amendments is, however, a cause of slowness in procedure. If members press for it, a division must be taken, and then the debate passes on to the next controversial item. At the end of discussion on each clause, the motion is put that the clause, amended or unamended as the case may be, shall be accepted. No further debate is possible until a division is taken. Then it is possible to go on to the next clause. Each clause is liable to be dealt



with in the same way until the original clauses and any new clauses have all been considered. Approval is then given to a title for the Bill. Until 1947, the separate committees managed to cope with business so that Bills were dealt with unhurriedly and clause by clause, but the heavy pressure of work arising from projects of nationalisation led to the use of machinery for curtailing discussion. This machinery had long been in use for Committees of the whole House, but had not hitherto been used for the smaller committees.

Following the Committee stage comes the Report to the whole House, when the Bill can be examined in detail once more. This gives any member of the House an opportunity to make a contribution, but the opportunity, though real, is restricted by the use of devices to hasten the conclusion of debate. Many clauses are in fact passed without a chance of discussion.

### **The Closure**

In securing the passage of a Bill through Parliament much good humour and much skill are needed. Where Bills are controversial, as they very generally are, it is the accepted duty of the Opposition to seek for any flaw they can find and to score what success is humanly possibly in modifying the Bill. To-day, a Government backed by a clear one-party majority is assured of victory in the sense that a Government Bill will certainly become an Act of Parliament, but the Bill is also certain to be modified on its way through Parliament. Any goals the Opposition can score for their side provide them with prestige. Their party may gain as a result of skilful attack, and the country may gain by having a scheme favourable to minority as well as majority interests.

These gains are, however, secured at considerable expense in time and patience. Opposition members, anxious to score against the Government, make violent attacks which sometimes draw violent rejoinders. The temperature of debate rises, and the real work of legislation is virtually brought to a standstill.

To offset these disadvantages, the Closure has been invented. The object is to secure the passage of a Bill without

interminable delay. The closure was introduced following the efforts of Charles Stewart Parnell and his fellow M.P.s to force the Parliament at Westminster to concede Irish Home Rule. On every possible occasion the Irish M.P.s prolonged the debates in the House. In 1881 the situation became tense when an attempt was made to talk a Protection Bill out of existence. The mere proposal that the Bill should be read occupied twenty-two hours. A whole week was subsequently spent without any real progress on the Bill. Then, after an all-night sitting of the House of Commons, the Speaker prevented an Irish M.P. from continuing his speech. The motion before the House was put without further discussion. In its original form, this "closure" was a clumsy device. In the middle of a debate, a member could rise and move "That the question be now put." The Speaker or Chairman of Committee might ignore or accept the proposal. If he accepted it, the House divided. A majority (provided that this was accompanied by 100 or more votes in favour) led to an immediate second division on the subject being debated. When the method was extended from a particular amendment or clause to whole groups of clauses, the closure became still more ferocious. In this way great numbers of amendments and speeches were lost for ever. The closure came, not inaptly, to be called the "guillotine."

The disrepute into which Parliamentary procedure began to fall led to the use of the Time-Table. Under this arrangement, the Government asks the House to accept a resolution allocating a number of days to different sections of a Bill, and the Time-Table extends to all stages in procedure down to the third reading. If the times can be properly allotted, reasonable opportunity is given for speeches on both sides of the House. The Government is not so concerned to put a bridle on its own supporters. The only need is to see that able and responsible spokesmen are not cut out by the less gifted members of the party.

To prevent the worst effects of the Time-Table, the "Kangaroo Closure" was invented. A Minister may move that a number of lines or clauses stand, leaving it to the Speaker

or Chairman to reserve amendments for discussion. This calls for skilful handling from the chair, but it has the advantage of sweeping away the more frivolous points.

Despite all this, the weight of legislation in recent times has led to very unsatisfactory results. Certainly the Cabinet gains in power over the legislature as a result of adherence to the Time-Table, but debate suffers. Committees have been provided with a time-table, as a result of which large sections of proposed legislation have been accepted without discussion, as in the case of the Transport Bill in 1947. Report stage, now more important than in the days when all Bills were discussed in Committee of the whole House, has been abbreviated until only a very perfunctory review is possible, as in the case of the Town and Country Planning Bill in 1947. The figures in this last case were alarming: 98 clauses out of 108 were not debated at all; 160 Opposition amendments were swept away *en bloc*; and 166 Government amendments were passed without a division.

A solution to the problem of procedure is not easy. On the one hand, legislative work in Parliament demands speed. On the other hand, there is a real need for careful, detailed discussion. It has been suggested that the whole House should consider principles only, while details should be the province of smaller committees, which would in that case be more numerous. Properly used, this device would obviate the excessive use of the closure; the member who rarely says much in a large committee might be encouraged to speak in a smaller group; and ill-digested legislation would be less likely to emanate from Parliament.

### **Conflict Between the Houses**

Until 1911 it was possible for the House of Lords to prevent the passage of any Bill accepted by the House of Commons. The House of Commons could do the same with Bills accepted by the House of Lords. In the event of a conflict over particular clauses or amendments, the Commons and the Lords both possessed an absolute veto. To avoid waste of time in playing shuttlecock with clauses, formal conferences were held to secure agreement on such clauses and

amendments as would make possible a workable Act of Parliament.

In 1909 the House of Lords took the unusual step of rejecting Lloyd George's Budget schemes, as embodied in the Finance Bill. The most serious cause of dispute was the proposed taxation of land values. Feeling ran very high both inside Parliament and outside it. The cry was raised that the Lords should be "ended or mended." To clear the air, the Liberal Government of the day resigned and appealed for a popular mandate to carry the Budget through and reform the House of Lords. But the result was that the Liberals tied with the Conservatives, and had to depend on the support of other groups. With the help of Labour members and Irish Nationalists, the Liberal Government was able to go on for a while, but the question of land values and Lords reform had to be shelved. Edward VII died during the crisis, and there was a temporary truce. But the dispute soon reopened, and a new election was held, no more decisive than before. Nevertheless a Bill was introduced to reduce the power of the House of Lords. George V, like William IV in 1832, agreed, if necessary, to create more peers. This was to secure the passage of a Bill to give the Lords a suspensory veto on ordinary Public Bills and to remove their power to obstruct the passage of Money Bills. Provided that Money Bills are sent to the House of Lords a month before the end of a Parliamentary session, they now become law whatever the House of Lords may decide. With regard to other Public Bills, the Lords could suspend their coming into force for two years. The Welsh Disestablishment Bill, passed by the Commons in 1912, became law in 1914—despite opposition in the Lords. But the Labour Government of 1945 argued, even so, that a two-years veto might nullify some of their important work. Hence the Parliament Act, 1949, which limited the veto to one year.

After the First World War the Lords accepted the position that even a suspensory veto was not a weapon which it was advisable to use arbitrarily. The possibility that peers might be created to swamp an anti-Government majority is a bitter reminder of the need to be conciliatory. Some members of

the Lords are inclined to resist changes and "damn the consequences." But this is not the prevailing attitude. The Lords offer their objections, propose amendments against the Government, and occasionally secure a promise from a Government spokesman that the Government itself will sponsor an amendment along similar lines. Occasionally a division in the Lords goes against the Government, but insistence by the Commons leads to a relaxation of the Lords' opposition, and the Bill normally goes through the Upper House without undue delay.

### **Money Bills**

Money Bills deal with taxation, loans, charges on the Consolidated Fund, and other financial matters such as appropriation and audit. In view of the special importance of finance, Money Bills are founded on resolutions passed by a Committee of the whole House of Commons. Ministers of the Crown put forward resolutions stating what money is needed for national expenditure, and how it should be spent. These estimates are discussed in Committee of Supply. During Committee time, the Speaker's chair is empty, and proceedings are regulated by a Chairman. Once the estimates are approved, the Serjeant-at-Arms advances to the table below the Speaker's chair. The mace is taken from its place underneath the table, where it is put during Committee, and reappears on the table to indicate that the House is in full session again. The Speaker goes back to his chair, and the Chairman, from the floor of the House, reports approval of the Estimates. But the House must now go into a second Committee, the Committee of Ways and Means. The Speaker descends, the Chairman returns to his seat, the mace goes under the table, and the House is again in Committee. The proposal is made that the amount estimated for national expenditure shall be voted by the House of Commons. This is formally agreed, and the Serjeant-at-Arms must again put the mace on the table, the Speaker must mount his chair, and the House must be told what it has already decided in Committee. The Financial Secretary to the Treasury then advances to the table and presents to the clerk a sheet unadorned except

for the title of the Bill. Before the House adjourns, the Bill is read for the first time. Thereafter, it proceeds in the way applicable to all Public Bills until the Queen gives her assent. The form of this assent is: "*La Reine remercie ses bons sujets, accepte leur b n volence, et ainsi le veut.*" It thus differs from the form of assent for ordinary Bills, which is just: "*La Reine le veut.*" On its course through Parliament the Bill provides opportunities for criticism of Government policy so far as this can be related to financial affairs. Of all Money Bills, the most important is the Finance Bill, which follows on the presentation of the Budget by the Chancellor of the Exchequer. This proceeds with painful steps and slow, as the Opposition warms to the attack on the Government. The Chancellor himself frequently has second thoughts, and a number of changes are worked into the Bill as it moves along. In 1947, for example, amendments were made to remove purchase tax from certain household goods, and cheap tobacco was secured for old-age pensioners. The House of Lords adds suggestions, but has an advisory capacity only. So long as the Speaker has certified a Bill to be a Money Bill, there can be no dispute about it. The Bill becomes law after the Commons have approved and the monarch has given her assent.

### **Private Bills**

Private Bills arose from the medieval custom of presenting petitions to obtain some change in the law in favour of particular individuals. At the present time, Private Bills can apply to specified persons, localities, or corporate bodies. Examples are Bills to administer a trust estate, and to give powers to a municipal authority. The procedure differs from that of Public Bills. A beginning is made by petition, which must be cast in a prescribed form. When the examiners are satisfied, the Bill goes to the House and is presented by the Clerk. Proceedings may open in the Commons or the Lords, but the Lords often get the Bill to handle at the outset because of the pressure of business in the Commons. There are three readings and a Committee stage, but the whole process resembles a judicial rather than a legislative action.

After the formal first reading, a Private Bill may be objected to on the second reading. If the Bill is unopposed it goes to a committee of four M.P.s, and then has a formal third reading. Members who wish to oppose a Private Bill must lodge a petition against the Bill in the Private Bill Office, asking to be heard by themselves or by their agents. A spokesman for the Opposition must call out "Object" when the Clerk presents the Bill. Time must then be found to discuss the pros and cons, and public business must be put aside at an early date to allow for discussion. This is usually limited to very general principles, details being considered by a committee of five M.P.s, plus the Counsel to the Speaker. This sits in one of the upstairs rooms of the House. It is in this committee that the judicial character of the proceedings appears. The promoters and opponents of the Bill brief counsel, who, in wig and gown, plead their clients' cases. The "judges" are the members of Parliament appointed to the committee. They deliver a verdict, which is fundamental in determining the fate of the Bill. If they declare that "the preamble has not been proved," the Bill is dead. But if the preamble is "proved," the committee deals with the Bill, clause by clause, making amendments if necessary. Once over this hurdle, the promoters of the Bill are likely to get it through the third reading; and the fact that one committee has approved makes it likely that the committee in the other House will do likewise. The procedure is costly, and only a powerful body such as a County or County Borough Council can promote a Private Bill. By convention, about half the Private Bills submitted are dealt with first in the Lords, the other half in the Commons.

### **Royal Commissions**

For legislation to be effective it is useful to have, before a Bill is framed, a thorough sifting of evidence and the presentation of points of view. Accordingly, it has frequently been the case that Royal Commissions have been set up to inquire into social and administrative problems. The commissioners are appointed by the Government of the day and are given power to summon and examine witnesses. A detailed inquiry

is made and a report follows. A notable example is the work of the Royal Commission on Greater London, which was set up in 1957 and issued its report in 1960. Committees of Inquiry can be set up by Parliament among its own members to carry out similar functions, and Government departments may appoint Inter-Departmental Commissions. Many commissions are dispersed when their work is done, but some have a prolonged life. Permanent types of commission include the Charity Commissioners and the Church Commissioners. In a few cases, commissions have been strongly established or have grown into State departments, as happened to the Commissioners of Poor Law and Public Health, whose functions, and many more, are now the business of Ministries concerned with social welfare.

### **Delegated Legislation**

The pressure of business in Parliament has led to the delegation of much legislative business. The process of delegation is an old one; the novelty lies in the extent to which the process has been taken. The delegating authority is Parliament itself, and the powers granted are always subject to review, but the extent of delegation and the problem of providing checks make adequate control difficult.

By-laws may be made under statutory authority either by local authorities or by corporate bodies. The behaviour of people in municipal parks, for example, is regulated by bodies which have permissive powers strictly regulated by statute.

Provisional Orders, *i.e.* orders the ultimate validity of which depend on parliamentary confirmation, deal with local schemes, and they are always supported by a Government Department. To give the orders validity, a Provisional Orders Confirmation Bill is passed, in which they are mentioned in a schedule. Prior to their mention, the contents of orders must be made public in local newspapers and must be communicated to Departments and local authorities affected. By this means the ordinary type of Private Bill has come to be used less often.

Under many statutes, Government Departments are empowered to use Statutory Instruments, formerly known as



**Statutory Rules and Orders.** These instruments are orders which have parliamentary authorisation in advance of their being drawn up. In some instances these come into operation as soon as they are made; in others they lie on the table of the House for a specified period, to give an opportunity for objections to be raised. A very large amount of legislative business is done in this way. These orders are either accepted tacitly or rejected *in toto*. The disadvantages of this method lie in the very real danger that Parliament may neglect to consider these orders as fully as they deserve. Thus the powers of Parliament tend to rust out with disuse. The machinery which was reasonably good in the nineteenth century is no longer quite adequate. The enormous volume of necessary legislation in the twentieth century calls for a grafting of new shoots on to the old Parliamentary stock. Otherwise an over-powerful executive, inadequately controlled by the elected representatives of the nation, may become a menace to personal and political liberty.

### **Ecclesiastical Legislation**

During the Middle Ages, the clergy legislated for the Church through Convocation. But in the reign of Henry VIII, who became Supreme Head of the Church in England, members of Convocation acknowledged their incapacity to make canons without the royal consent or to make canons binding on the laity. All the important changes made during the Reformation were embodied in Acts of Parliament, and Convocation played a minor role. From 1717 to 1850, its assemblies were purely formal, but in 1850 Convocation began once more to discuss ecclesiastical matters. In 1872 Convocation approved resolutions on public worship, which were afterwards given statutory form. Under the Church Assembly (Powers) Act, 1919, a National Assembly was set up, consisting of the Upper and Lower Houses of Convocation, and the House of Laity. This assembly can propose measures for the consideration of Parliament. In 1928, a revised Prayer Book was accepted by the Assembly, but was rejected by the Commons. Although the New Prayer Book was used in many churches, no action was taken to stop this practice.

## CHAPTER V

### COUNCIL, CABINET, AND CIVIL SERVICE

#### **The King's Council**

The King's Council, to which were summoned men of influence and power in the community, was in Anglo-Saxon times called the Witan. It was a body varying in composition and wide in functions. Every major function of State came within its orbit, and it advised the Crown in matters of peace and war, the defence of the country, the preservation of order, and the raising of money. It was concerned with what we should nowadays call legislative, administrative, and judicial business. There was no sharp differentiation of work either for the King and his more intimate officials or for the King and his great landholders.

After 1066 the Norman *Curia Regis* took the place of the Witan. It was a feudal council to which the greater landholders expected to receive a summons, and which officials attended by royal command. The principal official up to the time of Edward I was the Justiciar, and other important officials were the Chancellor and the Treasurer. In time the Justiciar became less important, and the Chancellor became the King's principal servant—a position which held good down to Tudor times.

Gradually, from the Norman Conquest onwards, a difference grew up between the Great Council, or *Magnum Concilium*, and a smaller, or Continual, council to which the name *Curia Regis* was applied, though it was also applied to the greater council as well. In fairly normal times the King summoned a few of his advisers regularly, but in times of crisis the great barons were also invited to offer their counsel. This Great Council was the foundation-stone of Parliament.

Under the Tudors, the Privy Council, which was the residuary legatee of the Continual Council, flourished exceedingly. Parliament, which was the King's Council strengthened

by representatives of aristocracy, clergy, and the "third estate," met but rarely ; and the Privy Council, composed of officials dependent on the Crown for their tenure of office, made regulations for the good government of the country, supervised the work of the local Justices of the Peace, and dealt with offenders who were too powerful to be adequately punished by the ordinary courts of law.

In Stuart times, the Privy Council became very much disliked by progressive landowners and merchants ; and the Long Parliament cut down its powers, and abolished altogether side-shoots like the Council of the North and the Council of Wales. The Privy Council, however, as the central body of royal advisers, continued to be important in Charles II's day and its committees multiplied. Most important of all was the informal committee, which discussed the highest matters of the State with the King. From this body developed the Cabinet, which in the end over-topped all the other developing organisations of the State, with the exception of the Sovereign-in-Council-in-Parliament.

### **The Privy Council**

At the present time, the Privy Council is composed of about 300 persons. In it are all Cabinet Ministers, past and present, the Archbishop of Canterbury, the Speaker of the House of Commons, the Lords of Appeal, the Lord Chief Justice, retired High Court Judges, and high-ranking ambassadors. Appointment is by a formal declaration of the Queen-in-Council, together with the entry of the name in the record. There is a Lord President who is a senior Cabinet Minister. Sons of the Sovereign are Privy Councillors by right of birth, and they do not need to swear allegiance. Other Councillors must take the oath of allegiance, and a special Privy Councillor's oath pledging them to secrecy. Every Privy Councillor has the right to act as a Justice of the Peace for any part of the country. A full meeting occurs only on the death of the monarch. Then the Council assembles, with the lords spiritual and temporal, and with other important persons, to proclaim the monarch's successor.

Although the Privy Council, meeting as a body, has ceased to be important in the government of the country, the ordinary meetings of Privy Councillors are of some consequence. For any meeting the presence of the Queen and the Clerk are essential. Strictly, the quorum is three, and this quorum sufficed in May 1955 for the issue of an Order-in-Council to deal with a railway strike. The Privy Council does not deliberate on matters of State, but meets to give formal recognition to Cabinet plans. The Privy Council also provides the membership of Committees. Some committees, like the Board of Trade, are ordinary Government Departments. But the Judicial Committee of the Privy Council, set up in 1833, is important as a court of appeal from ecclesiastical and overseas courts. The Cabinet, which is the most powerful institution in the State, is, in a sense, an informal committee of the Council. The Cabinet bears a responsibility to Parliament, but its power lies in the fact that it comprises the political leaders of the party or parties in power, acting under the Prime Minister.

### **The Growth of the Cabinet**

The Cabinet has its remote origins in the royal choice of leading members of the Privy Council and the two Houses of Parliament to advise him on the major problems of the day and to make proposals in regard to the government of the country. At first the King's advisers were responsible only to the Crown. But Parliament's victory in the Civil War, 1642-49, established a measure of control over policy which ultimately made it necessary to appoint Ministers responsible to Parliament as well as to the Crown. In 1678 it was laid down, in the case of Danby, that a Minister might be impeached even for acts done by the King's orders. Because a Minister might be tried by the Lords on a charge made by the Commons, which was the essential of impeachment, it became advisable for the Crown to make appointments satisfactory to the Commons, and Parliament put its trust in this procedure until the eighteenth century. The Act of Settlement provides that the King should not pardon any person prior to an impeachment, though his right to pardon after the

trial was over remained untouched. This was to prevent Ministers escaping the publicity which accompanies a public trial, and which parliamentarians believed was a necessary method of controlling Ministers.

Until the eighteenth century the prevailing idea was that tyranny could best be prevented by a separation of powers. Legislative, executive, and judicial authority could not be made absolutely separate, but the three fields of activity were fairly clear. If each field were under separate management, the managers in each having a virtual monopoly within their sphere, there would be a balance in the constitution which would ensure good government. The King's Ministers were responsible to the King, but if they stepped outside the law, they could be tried. Members of Parliament could legislate, but only with the assent of the King. The judges were largely independent but not entirely so, since they were appointed by the King and could be dismissed by Parliament. This system of checks and balances, impressive as it was to outsiders, influenced the constitution-makers of the U.S.A., who built a rigid structure on the idea. But, in England itself, the circumstances of eighteenth-century politics led to the creation of new machinery, the significance of which was not fully apparent before the time of the younger Pitt. In practice, Parliament did not dismiss judges, though authorised to do so by the Act of Settlement; while Parliament did come, in effect, to dismiss Ministers—for which there was no statutory provision. The judiciary became more sharply separate from both legislature and executive, but these latter became closely intertwined. The rule that holders of office under the Crown should not be M.P.s was established in 1701, but abandoned only a few years later as far as principal office-holders were concerned. Ministers initiated policy in Parliament and had to listen to criticism from dissident members. Very slowly, the Ministers came to yield when votes went against them. Meanwhile, the weapon of impeachment grew rusty.

The Hanoverian period saw a sharp decline in royal influence, and under George I and George II there was little fear that Ministers would be selected against the will of Parliament. These Kings, unable to speak English, did not, after

1717, even attend Cabinet meetings. The King's place was taken by the leading Minister, who became known, in mockery, as the Premier or Prime Minister. The famous statesman, Walpole, disowned the title, but he was in fact a good disciplinarian, and deserved the epithet. Those who disagreed with him were obliged to leave the Government. He relied on the House of Commons for support. If he could not carry the day with ease, he dropped his proposals and turned to deal with some other problem. When the Commons disapproved finally, he resigned and went to the House of Lords. A period of increased royal influence followed, George I preparing the way for his ambitious grandson. After a brief spell during which George III ruled with the aid of a pliant Prime Minister, the Cabinet system was built on Walpole's foundations. Gradually the practices by which a smooth working of the Cabinet was ensured came to harden into conventions, and the Cabinet acquired the form and constitution which have made it a well-tried instrument of government.

### **The Prime Minister**

The eighteenth century saw the *de facto* establishment of the position of Prime Minister. But George III, unlike his two predecessors, was unwilling to surrender control of affairs to Parliament and Ministers responsible thereto. He asserted himself and chose Ministers to his own liking. Although he did not attend Cabinet meetings, he reduced the Prime Minister to a position of second importance in the country. Lord North, whose ministry lasted from 1770 to 1782, was as dependent on the Crown as upon the House of Commons. But this balance of power could not continue. Either the King would ultimately recover power lost in earlier generations, or Parliament would defeat the royal purpose. The failure of the British Government in the War of American Independence, 1775-83, decided the issue. The independence of the United States of America was recognised after Lord North had resigned and George III had been humiliated. After this the younger Pitt, who addressed public meetings outside the House of Commons, put the position of Prime Minister on a sound footing. He was supported by all sections

of the people, the nation at large as well as Parliament. The position of the Prime Minister as the leader of the dominant political party was now established, but it was not until 1905 that the position of Prime Minister (which is nowadays associated with the nominal office of First Lord of the Treasury) received official recognition.

When a new Parliament is elected nowadays, the Queen sends for the acknowledged leader of the strongest political party. This leader is then given the task of forming a Ministry. The Queen's choice is normally quite clear. The party has indicated where the choice must be, and the invitation by the Queen is a formality. It is the duty of the Crown not to place any impediments in the way of the Prime Minister, whose selection of colleagues is conditioned by clear indications of the powers of prominent party leaders. The existence of a Shadow Cabinet in opposition gives a clue to the likely occupants of office when a new Government is formed. The Queen's part is confined at most to the offer of advice. She is not expected to decide who shall be Ministers, though her formal approval is necessary.

A Prime Minister whose position in the House of Commons is unsatisfactory has two roads open to him. He can at once resign or he can advise dissolution. In 1940 Neville Chamberlain resigned, although he had a short time previously received a strong majority vote in his support. There was, however, no dissolution. A critical stage had been reached in the Second World War, and Chamberlain felt that he was not the right man to carry the nation through its ordeal. Winston Churchill, who was asked for by the Labour party, was approached, and accepted the position of Prime Minister in a coalition Government. Sir Anthony Eden's resignation in 1957 through ill-health, did not lead to a dissolution of Parliament. Harold Macmillan "emerged" as an acceptable successor. A course open to a Prime Minister who feels that he cannot proceed with a new policy in the existing House of Commons is to secure a dissolution of Parliament in the hope that a popular mandate will re-establish his authority. Stanley Baldwin did this in 1923, when he sought a mandate for Protection, and resigned early in 1924 on a hostile vote. This

led to the formation of a minority Labour Government, kept in office by the support of a few Liberals.

A Prime Minister, though comfortable in the House of Commons, will advise a dissolution of Parliament at as favourable a moment as possible when the time approaches for the statutory end of Parliament. Thus the Government in 1929 took what was thought to be a suitable moment for dissolution, but the event showed that the Government's optimism was misplaced. Dissolutions by Conservative Governments in 1955 and 1959 were much more successful, resulting in a substantial increase in the Government's majority on each occasion—a record in British politics.

The resignation of a Prime Minister may be the result of an adverse vote, as in the case of Ramsay MacDonald in 1924, but a "snap" division (*i.e.* a division when so few M.P.s are present that the House would certainly reverse the verdict at the next opportunity) may be disregarded. Such a division occurred in April 1950 when the Labour Government was defeated on a motion of adjournment. A rift in the Cabinet may lead to resignation, as happened in 1905, when Balfour resigned, and again in 1931 when MacDonald resigned. But a minor rift need not cause resignation. The loss of Anthony Eden from the Cabinet in 1938 did not lead to the resignation of Neville Chamberlain.

Much depends on the Prime Minister himself. A powerful personality will smash his way through obstacles, as did Lloyd George in 1917-19 and Winston Churchill in 1940-45. Less autocratic temperaments may suit times of peace. Lord Rosebery appeared to be little more than one among equals, and Clement Attlee, whose tenure of office began in 1945, allowed the limelight to fall less upon himself than upon the Foreign Secretary, Ernest Bevin, the Chancellor of the Exchequer, Sir Stafford Cripps, and the Lord President of the Council, Herbert Morrison.

But, whether the Prime Minister is the centre of public attention or not, he is as much the keystone of the constitutional arch as the President in the U.S.A. His grip on the party is firm, and his control of Ministers is even firmer. He can force Ministers to resign or switch them to new positions.



He has a general oversight of all policy and knows in outline what each Department is doing, though he cannot know very much detail, unless he has the tenacious memory of a Winston Churchill. The most important task of the Prime Minister is to act as chairman of the Cabinet. He must be adroit in committee work, and he must secure respect by being always ready to listen to his colleagues but never ready to allow one Department to override others. His own comments need to reflect the interest of the community, and it is his task to give perspective to problems which Ministers tend to look at from their own special points of view. In the House, the Prime Minister is required to present his case in its general setting, to support his colleagues, but not to steal their thunder. Unless he has given evidence of the necessary qualities beforehand, a man is not likely ever to be a Prime Minister.

### **Cabinet Government**

The fundamental characteristic of Cabinet Government is that, while it involves the individual and joint responsibility of Ministers to Parliament, M.P.s are guided and directed by the Cabinet during the life of Parliament. This intertwining of two responsibilities is the essence of the matter. On the one hand the House of Commons can bring about the fall of the Cabinet; on the other, the Cabinet can bring about the dissolution of Parliament. Both must work in harmony or an appeal is necessary to the electorate, and the upshot of the appeal decides the constitution of the next House of Commons, and the constitution of the Cabinet, which must be composed of members, under a Prime Minister, who can depend on a working majority.

The powers which the Commons and the Cabinet possess to destroy each other are, however, weapons too clumsy for anything but an extremity. To enable the Cabinet system to work easily and harmoniously, certain auxiliary characteristics have been evolved, and others are in the process of evolution.

Except in times of stress, when Coalition Governments are formed, Cabinets are formed exclusively from one party. They have thus a common platform and sufficient principles

in common to make possible the presentation of a united front. In public, the members present the appearance of absolute uniformity. A decision once made by the majority is accepted by all. Bagehot relates that at a Cabinet meeting discussing a fixed duty on corn, Lord Melbourne said: "Now, is it to lower the price of corn or isn't it? It is not much matter what we say, but mind, we must all say the same."

Cabinet meetings are in a high degree secret and informal. Until 1914 there were no minutes and no records. But during the First World War a Cabinet Secretary was appointed. The practice was continued in post-war years, and a small staff exists to keep records. But many points are discussed without notes being taken, and members are expected not to divulge any differences revealed at Cabinet meetings. Any attempt at formal or open meetings would immediately lead to the creation of an inner ring for secret discussion. Without this preliminary secrecy, it is inconceivable that Governments could do their work. Even as it is, preliminary talks by four or five principal Ministers may precede the submission of a plan to the Cabinet as a whole.

The Cabinet is restricted to about twenty in peace-time and perhaps no more than five in time of war. In critical times fewer people are entrusted with vital information and the framing of vital decisions. The need for quick action also promotes the concentration of power in few hands.

To secure respect for Government proposals, the Cabinet has virtual control of the Parliamentary time-table. In theory, the Commons can arrange its own programme, but in practice the Cabinet is almost a dictator. Government measures occupy most of the time spent by the House of Commons, and it is a well-established rule that all finance measures emanate from the Government. Only on a very few occasions does the Cabinet allow "free voting." For the most part, voting for Government measures, financial or otherwise, is on party lines. The Whips are active to see that a maximum of supporters go into the right division lobby. A vote against the Government would normally be regarded

as a vote of no confidence; and members of the party in power would not, as a rule, risk the displeasure of party organisations by running counter to Government policy.

In general, Cabinet development during recent years has been in the direction of emphasising Cabinet control of Parliament. Lord Morley, in his *Life of Sir Robert Walpole*, put as the first feature of the Cabinet system "the doctrine of collective responsibility." In addition to individual responsibility, he said, "each Minister largely shares a collective responsibility, with all other members of the Government, for anything of high importance that is done in every other branch of public business besides his own." In fact, this responsibility to Parliament has grown weaker. The growing tendency is for Ministers to control Parliament. There is also a tendency for Ministers to rely on the Premier, though a Minister must accept departmental responsibility, witness Sir Thomas Dugdale's resignation from the Ministry of Agriculture in 1954 after he had defended the Department which was later shown to have been in the wrong (p. 152).

The development of the Cabinet as the initiating body in legislation is comparatively recent. In the eighteenth century, the Cabinet came to take a big share of legislative proposals, and, in the nineteenth century, Government-sponsored legislation came to occupy still more of Parliament's time. The growth of legislative activity and its concentration in Government hands meant that the executive duties of Ministers tended to decline. These are still important, but they are overshadowed by the work of Ministers in handling Bills with hundreds of clauses. In the present century, Parliament has come to act as a registration office for the decrees of the Cabinet. Such a generalisation needs some modification in view of the care taken to sound public opinion in advance, and of the acceptance by the Government of many suggestions from back-benchers, particularly manifest in very recent times in Government support for many Private Members' Bills, e.g. the Coroners' Bill (1954) which provided for better fees and allowances for doctors and witnesses at inquests. But the *fiat* of a Minister is in effect final. If he

states that the Government is unable to support any suggestion, the suggestion fails. The principal feature of the Cabinet is that power, and particularly legislative power, is concentrated there.

### **The Constitution of the Cabinet**

A distinction is drawn between the Government and the Cabinet, the Government comprising all the principal Officers of State, but the Cabinet including only those selected by the Prime Minister for intimate consultation on the highest matters of policy.

In 1962, Harold Macmillan's Cabinet of twenty-one included the Prime Minister, the First Secretary of State, the Secretaries of State for Foreign Affairs, the Home Department, Scotland, Commonwealth Relations and the Colonies; the Ministers of Education, Defence, Agriculture, Fisheries and Food, Labour, Housing and Local Government, Transport, and Health; the Lord Chancellor, the Lord President of the Council (also Minister for Science), the President of the Board of Trade, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Chief Secretary to the Treasury and Paymaster-General, the Lord Privy Seal, and a Minister without Portfolio.

There were also twenty Ministers outside the Cabinet, including the First Lord of the Admiralty, the Secretaries of State for Air and War, the Ministers of Aviation, Power, Public Building and Works, and Pensions and National Insurance, the Postmaster-General, the Secretary for Technical Cooperation, the Ministers of State for Foreign Affairs (two), Colonial Affairs, and Welsh Affairs, and at the Home Office, Board of Trade, and Scottish Office, and the four Law Officers (Attorney-General, Solicitor-General, Lord Advocate, and Solicitor-General for Scotland). The Government was completed by over thirty junior Ministers (usually Parliamentary Secretaries or Under-Secretaries) and a number of Government Parliamentary Whips.

Cabinet position may be accorded to any Ministers the Premier thinks it desirable to have included. Because of their obvious importance, the Chancellor of the Exchequer, the

Home Secretary, and the Secretary of State for Foreign Affairs could hardly be excluded. Even in Winston Churchill's small War Cabinet (1944) these three were among the eight who comprised it. In normal times, others, like the Lord Chancellor and the Minister of Labour, are likely to be within the charmed circle. But while, for example, the three Service Ministers were in the Cabinet until 1946, the same offices did not carry a Cabinet position afterwards because of the appointment of a full-time Minister of Defence with Cabinet rank.

With the multiplication of Ministries, it is obviously desirable to check any tendency to regard specific offices as carrying the right to inclusion in the Cabinet. Only by preservation of extreme flexibility in choice is it possible to prevent the paralysis of the Cabinet system.

Each Minister has normally a dual role; he is a departmental head, and also a participant in the framing of general policy. In regard to the latter, the Premier is the real leader.

### **The Opposition**

A feature of the British system of government is the skill with which a Ministry, composed of men previously out of office, deals with problems of intricate and delicate policy. This is in part the outcome of continuity in the Civil Service, but is also due in no small measure to the existence of Her Majesty's Opposition. The steady flow of criticism from Opposition benches, which is an essential of the party system as it works in Parliament, is only possible because Opposition leaders become acquainted in detail with what is going forward. They know from day to day what is being done, they have a shrewd idea of what is within the realm of the practical, and they frame a constructive programme as part of their attack on Government policy.

The phrase "His Majesty's Opposition" appears to have arisen from a "half-derisive speech by Hobhouse, afterwards Lord Broughton." According to Porritt, Hobhouse made, in 1826, a neat contrast between His Majesty's Ministers and His Majesty's Opposition. Canning, who was no mean judge

of a good phrase, pronounced it excellent. Tierney, who followed up, said: "My right honourable friend could not have invented a better phrase to designate us than that which he has adopted; for we are certainly to all intents and purposes a branch of His Majesty's Government." The phrase continued in use and has become sanctified by age.

The practice of taking sides permanently in the House goes back, however, to an earlier period. During the eighteenth century, "members began generally to seat themselves on different sides of the Chamber, to the right of the Speaker if they were to support the Government, to the left if they were in opposition." It has often been pointed out that the arrangement of seating in St. Stephen's Chapel, where the Commons sat from the sixteenth to the nineteenth century, facilitated the practice of dividing members sharply into "Ayes" and "Noes." The design of the chamber has thus reflected the nature of British party politics. The House of Commons was burnt down in 1834, but the new structure followed the old design. In the Second World War the House of Commons was again destroyed. The new building, which was begun in 1947 and opened in 1950, still incommodious inasmuch as it will not seat all the M.P.s, retains the old arrangement of benches facing each other. The continuing existence of a regular Opposition is taken for granted.

In 1937, when statutory provision was made for Cabinet Ministers' salaries, the Leader of the Opposition was granted a salary of £2,000 a year (since raised to £3,000). It might be thought that this would tend to make for a more pliant Opposition. But post-war criticism of the Government lost nothing in virility, and the last thing that could be said of Winston Churchill, as Leader of the Opposition, was that he handled the Government with less ferocity than his predecessors in this position. On the face of things, a paid leader of an official Opposition seems to suggest an oligarchical type of Government in which the Opposition does little more than shadow-boxing. The truth is very different. The system is, in practice, a safeguard of liberty.

### **Characteristics of the Civil Service**

Members of the Civil Service hold appointments in the various Departments of State. Technically, they have always held office "at the pleasure of the Crown," but in practice they have had the advantages of fixed and reasonable salaries, together with security of tenure, subject of course to good behaviour. The power of sudden dismissal, exercised in the name of the Crown, has, however, occasional untoward effects, cases of dismissal occurring after the Second World War, without reason given, but arising almost certainly from reported activity in extreme left-wing party organisations.

The special characteristics of the Civil Service derive from a process of historical evolution which is unique. France, until the Revolution, was burdened with a system in which holders of office could hand their positions to their sons, or could sell the right to hold the offices to the highest bidder. Despite the corruption of eighteenth-century politics in England, nothing quite so bad as this occurred here. There was, however, a danger that office-holding would become closely related to party politics, as it is in the United States of America, where the "spoils" system prevails despite some reforms. The danger was averted partly by eighteenth-century changes, which involved the abolition of many sinecures, and partly by the rise of new methods of appointment which were adopted in the nineteenth century.

The new era opened in the 1850's. There were obvious evils in the system of patronage which, until that time, prevailed at the Treasury. The result was an inquiry into the working of the system, and a Report came out in 1854, prepared by Sir Stafford Northcote and Sir Charles Trevelyan. They recommended that admission and promotion by merit should supersede the system of personal favour, as had already been done in the administration in India. Experiments were made, at first on a small scale. In 1870, by exercise of prerogative through an Order-in-Council, established posts in the Civil Service, except for the Foreign Office and the Education Department (which fell into line later), were opened to competition through examinations, written

and oral, organised by the Civil Service Commission. Departments are free to make temporary appointments, which may later become established through the Civil Service Commission. Many temporary civil servants joined during the Second World War and some rose to the highest ranks.

The Civil Service stands in a peculiar relation to Parliamentary Heads of Departments. The principle that civil servants should be outside party politics has meant that elected M.P.s must accept a measure of responsibility for what is done by permanent officials. Few Ministers would go as far as Sir Austen Chamberlain, who in 1917 resigned his position as Secretary of State for India, as a result of the revelation of mismanagement of medical services administered by the Government of India. But Ministers are expected to answer for the work of their Departments, and cannot disclaim all responsibility for what is done in their name. Membership of the Civil Service has meant exclusion from Parliament, and even under reforms made in 1953, high-ranking civil servants are still unable to stand as candidates, though the lower grades are not excluded. But all have voting powers in national and local elections, like other citizens. It is, however, a recognised principle that civil servants shall serve the Government of the day without regard to the party views they hold. This is the Civil Service tradition.

### **The Divisions of the Civil Service**

The higher branches of the Civil Service belong to the "administrative" class and the senior branch of the Foreign Service. Immediately below the Parliamentary office-holders are the Permanent Secretaries. The head of the Home Civil Service is one of the two Joint Permanent Secretaries to the Treasury. In each Department a Permanent Secretary acts as the co-ordinating authority for all the branches in his Department. Each division has an Under-Secretary, and below him the Assistant Secretaries. Then come Principals and Assistant Principals. The usual examinations for entry are related to the standards of Honours examinations in the Universities, but there is, in addition to a written test, an



oral examination which may have a decisive effect. In 1945 the experiment was tried of using methods adopted during war-time by the War Office Selection Boards. Cognitive, better known as intelligence, tests were applied, and candidates selected after judges had noted all aspects of their behaviour. The system was so successful that a considerable proportion of posts are now recruited by Method II, under which candidates are given pre-graduation tests aimed at recruiting candidates of high ability and resourcefulness. Confirmation of appointment depends on good class honours in degree examinations. Method I involves the tried and proved tests, long in vogue, of academic ability. The work of recruits is of a routine kind at first, but they are soon called on to find solutions for administrative problems outside normal routine. Parliamentary heads of Departments rely very largely on information provided by the Permanent Secretariat, who must supply up-to-date statistics relating to their Department, and provide Ministers with information on which they can base answers to questions in the House. It is also their task to frame schemes to implement Government policy and to interpret statistics and orders relevant to their work.

Below the administrative is the "executive." These are recruited from young people who have reached a reasonably high academic standard approximately equal to the Advanced level of the General Certificate Examination. Their work is to carry out decisions made by the administrative classes, and they are also required to supply data on which comprehensive surveys and statistics can be founded. The "clerical" class do the more important writing work, while the purely routine copying is done by "clerical assistants." There are also professional, scientific, and technical, advisers, who stand outside the normal system of recruitment. The other chief group, classified as "minor and manipulative," includes a wide range of servants engaged in the Post Office.

In addition to the non-industrial civil service (amounting in 1939 to about 350,000 and in 1961 to about 650,000 persons), there are a large number of civil servants in Government arsenals, shipyards, etc. The employees of the

nationalised industries are not included in the Civil Service as it is commonly understood. Their salaries and conditions of work are, however, closely related to those in the Civil Service.

The importance of the professional, scientific, and technical officials is increasing, but they are on the fringe of the long-established Civil Service organisation. The administrative class has been criticised for not fully exploiting the services of these experts, but liaison between them has improved.

### **The Civil Service Associations**

During the nineteenth century, when unionism was growing among wage-earners, there was a parallel movement among professional people. In the Civil Service, staff associations sprang up, but found negotiation difficult in the absence of a clearly defined employer. In 1919 the problem was solved by the formation of a National Whitley Council, with branch councils in each department. In these councils, representatives of the civil servants' associations met men deputed to represent the "official" side. The value of these discussions in settling problems of remuneration and promotion led the Treasury to encourage civil servants to join one of the associations.

In order to emphasise the non-political character of the Civil Service, the Trade Disputes Act of 1927 prohibited civil servants from affiliating to federations of trade unions. The Civil Service Associations were thereby prevented from linking with the Trades Union Congress. In 1946, however, the Act of 1927 was repealed and the associations became legally free to co-operate with the industrial unions.

A difficulty arose from this new freedom, because affiliation to the T.U.C. or the Labour party seemed to be against the non-party tradition of the Civil Service. The problem of "existing limitations on the political activities" of Government staffs was considered by a committee under the chairmanship of Mr. J. E. Masterman. This issued its report in 1949. The political neutrality of the Civil Service was declared essential to the working of democratic government, but it was proposed that a line should be drawn between civil servants

doing comparatively routine work and those with greater responsibilities. For those below the "Treasury," professional, technical, or scientific grades, complete political freedom was permissible. They could even stand for Parliament and need not resign unless elected. For the others, resignation was regarded as necessary before they appeared as candidates for Parliament. The Masterman Report was accepted by the Treasury and its recommendations were made effective in 1953.

## CHAPTER VI

### OFFICES OF STATE

#### **Government Departments**

The Cabinet is the principal element in the executive, but only the most important issues come before the Cabinet Ministers. All details and routine are left to the Departments of State. Each Department is headed by a Minister sitting either in the Commons or the Lords. In most Departments there are one or more Parliamentary Secretaries, and in some cases there is also the more senior office of Minister of State. At one time the practice seemed likely to develop of having a Minister in one House and a Secretary in another, but this development came to an end, the usual practice now being to have a few Ministers in the House of Lords and almost all junior Ministers in the House of Commons.

In the official table of precedence the most exalted dignitary among the officers of State is the Lord Chancellor. The title has been traced back to *cancellarius*, an official under the Roman Empire who stood at the lattice (*cancelli*) of a law court and did the work of an usher. From this humble beginning, the official rose in importance. In England there was a Chancellor in pre-Norman times who was, according to Lowell, "the chief of the King's secretaries, the chief of the royal chaplains, and the custodian of the royal seal." His duties are to-day mainly concerned with the administration of justice, though he has many other duties in addition. He is the principal legal adviser to the Government and appoints to judicial offices. The Law Officers of the Crown have a separate Department and represent the Crown in the law courts: in England the principal officers are the Attorney-General and Solicitor-General: in Scotland they are the Lord Advocate and the Solicitor-General for Scotland.

On the financial side the key department is the Treasury. This department was for centuries under the direction of

the Lord High Treasurer, but since 1714 the office has been "in commission," the duties of Treasurer being handed over to the Treasury Board, which is appointed by letters patent under the Great Seal whenever a new Ministry is formed. The First Lord of the Treasury is, however, nowadays Prime Minister and has little to do with the work of the Department. Junior lords are likewise not concerned with Treasury business, but normally act as Government "Whips." The Treasury Board is therefore one of those boards that never meet, the main business of the Treasury being in fact discharged by the Chancellor of the Exchequer and his colleagues.

A number of departments are controlled by Secretaries of State. There was a Secretary of State in the Middle Ages, but the office did not become very important until Tudor times. In Elizabeth I's time, Sir Robert Cecil was "Her Majesty's Principal Secretary of State." He was the chief adviser of the Crown and added lustre to the office he held. The Secretaryship was later shared between two people, then three, until in 1962 there was a First Secretary of State and six other Secretaries of State. By the grant of their seals of office, the Secretaries are entitled to countersign any Act of State, and, though the various officers have different duties allotted to them, any one Secretary may in law exercise authority in any department for which a Secretary of State is a responsible officer.

Most of the other departments are Ministries or Boards—the latter being formal in character, with the power exercised in practice by the President. For the most part the Ministries and Boards are concerned with economic and social welfare; for example, the Board of Trade, the Ministry of Agriculture, Fisheries and Food, the Ministry of Health, and the Ministry of Pensions and National Insurance. When profound changes occur in national life, new Ministries are created, some temporarily (as in the case of the Ministry of Information set up in the Second World War), and some permanently (as in the case of the Ministry of Health, set up in 1919 to carry out schemes applying equally to peace-time and war-time).

In addition to all these departments, there are a few offices to which only nominal or formal duties are attached.

Ministers appointed to such offices are available for consultation on general policy, and for particular development work. Examples are the Lord Privy Seal, the Lord President of the Council, and the Chancellor of the Duchy of Lancaster. In 1947 the office of Lord President of the Council was closely associated with the newly-formed Economic Planning Board; later on, the Lord President co-ordinated the working of the Ministries of Food and Agriculture, and still later was switched to the job of dealing with Atomic Energy. From 1960 the Lord President has also been Minister for Science. The office of Lord Privy Seal has, since 1960, been held by a Cabinet Minister, who deputises in the Commons for the Foreign Secretary (who is a peer). The advantage of having a few sinecures is that Ministers with only formal duties can assist in the creation of new organisations designed either to meet a temporary or a permanent need. If the organisation is no longer needed, it can be scrapped and the sinecure office may become associated with some new development. The same thing can happen if a permanent form of organisation is created. Having become established as a public office, it needs a chief who will have a title corresponding to his real position.

### **Finance**

The Exchequer originated as the committee of the King's Court (*Curia Regis*) which dealt with royal finance. To this department sheriffs brought the money collected on the King's behalf from the shires, and received as a receipt one half of a notched stick which was cut so as to represent the amount paid. The other half of the stick, or tally, was retained by the Exchequer. At an early stage the Exchequer Court, which dealt with disputes about national finance, separated from the accounting department. The Exchequer merged ultimately into the Treasury, which, as its name implies, housed the money received from the Exchequer. The title of Chancellor of the Exchequer survived, and by a long historical process, the Chancellor superseded in importance the Lords of the Treasury until he became the principal officer.

The Chancellor of the Exchequer is assisted by a Chief Secretary (who is also a Cabinet Minister and Paymaster-General), a Financial Secretary, and an Economic Secretary, all M.P.s. These Ministers answer in Parliament, together with the Chancellor, for the work of the Treasury. The Parliamentary Secretary and the Junior Lords act as Government Whips and are concerned with seeing that Government supporters rally strongly when divisions are taken in the House of Commons.

The principal duty of the Chancellor of the Exchequer is to adjust national income and expenditure. With the aid of his staff he secures a general picture of "getting and spending." Then, in the light of the nation's needs and in consultation with the Prime Minister and the heads of spending Departments, he prepares a Budget, which he presents to the Commons. Of the two Joint Permanent Secretaries to the Treasury, one is head of the Home Civil Service, but they both share supervision of the Treasury's work.

On the side of collection there are a number of important Government offices headed by permanent officials. These include the Crown Estate Commissioners, the Board of Customs and Excise, and the Board of Inland Revenue. The National Debt Office, originally designed to apply sinking funds to National Debt reduction, deals with investment and management of considerable public funds. The Public Works Loans Board deals with applications for loans at low rates of interest for projects undertaken in the public interest, but Local Government Authorities were forced again into the open market in 1953. Finally, the Paymaster-General's Office, formed by the consolidation, in 1835, of several pay departments, is the paying agent for the various Government departments, other than the Revenue departments themselves.

### **Home and Foreign Affairs**

A Secretary of State for the Home Department was first appointed in 1782, taking over most of the duties of the "Southern Secretaryship," which had been set up in 1688. This office had comprised duties in regard to Great Britain, Ireland, the Colonies, and Southern Europe, while the

"Northern Secretary" had assigned to him duties in regard to Northern Europe. When the reshuffle occurred in 1782, the Northern Secretary became Secretary for Foreign Affairs. Even so, it was not long before the heavy burden of work on the Home Secretary led to a further division of duties. War business went elsewhere in 1794, and Colonial business in 1801. Thus the title of Home Secretary came to be a reasonably accurate one, having regard to the duties which the Secretary was authorised to undertake. He was, and remains, the official channel of communication between the Monarch and his subjects; and he is therefore the first of Her Majesty's Principal Secretaries of State. Other Secretaries may do the work of any Secretary, but it is the rule that except where the matter in hand is the special concern of one of the Secretaries, or in any borderline case, the Home Secretary is called upon in the first instance to countersign the royal signature.

Formal duties of the Home Secretary include receiving and answering addresses and petitions to the Queen; acting as the official medium of communication between Queen and Church; advising in certain matters relating to the prerogative; and giving notice of treaties and royal births and deaths.

His more important duties relate to the maintenance of order and the administration of justice. When offenders are put on probation, they have to report to probation officers directed by the Home Office. He has a general supervision over the police, he has control over the Prison Commissioners, who supervise prisons and Borstal institutions, he deals with aliens and naturalisation, and he is concerned with children's welfare and the fire services. The Home Office has the main departmental responsibility for Civil Defence. It also administers the law governing Parliamentary and local elections.

The Foreign Office, staffed by the Foreign Service (which is not part of the Home Civil Service), deals with the relations between the British Government and foreign powers, and is responsible for the issue of passports. British representatives abroad are appointed by the Foreign Secretary. Ambassadors deal with diplomatic questions, consuls with commercial



matters. The Foreign Office therefore interlocks with the Board of Trade.

The Foreign Secretary, acting with other members of the Cabinet and, above all, the Prime Minister, shapes the policy of the country with regard to other States. The making of peace and war, and the conclusion of treaties, are the special concern of the Foreign Secretary. When important discussions are afoot, the Foreign Secretary must spend a considerable time abroad, putting the British point of view and expediting settlements which would otherwise be delayed by tedious transmission of messages and documents over long distances. Diplomats are given little discretionary authority, but the Foreign Secretary is able to act swiftly, knowing as he does the general point of view of his colleagues. He needs to consult them frequently, but his power to make concessions and insist on conditions is generously interpreted.

Owing to the secrecy which necessarily attends much negotiation, especially in its early stages and in critical circumstances, the Foreign Secretary often enters into agreements which may not see the light of day for a long time. On matters of high import, Parliament is not informed, nor do all members of the Cabinet necessarily share all the secrets. In war-time especially, when the doctrine of *salus populi suprema lex* acquires exceptional support, the Foreign Secretary, or the Prime Minister who may on occasion undertake the duties of the Foreign Office, has enormous power for good or ill. Official treaties, ratified by the Crown, are recognised as binding upon all Her Majesty's subjects, whether Parliament has formally approved or not. It is, however, generally accepted that treaties which alter the law of the land, affect the rights of British subjects, cede territory, or pledge the Treasury, need the approval of Parliament.

### **Defence and Supply**

In the organisation of the country's armed forces, a post-war Ministry is concerned with co-ordination. This is the Ministry of Defence, which has its roots in the efforts made between the two World Wars to secure efficient co-operation between the Navy, Army, and Air Force. A Ministry for

Co-ordination of Defence was set up in 1936, and abolished in April 1940. In May 1940, Winston Churchill became Prime Minister and took the title of Minister of Defence, but did not set up a formal Ministry. At the close of the war Mr. Attlee retained the title, but in 1946 a Ministry of Defence was created, concerned with all matters relating to the Forces, except Civil Defence. The Secretary of State for War, despite his comprehensive title, deals only with Army matters. An Army Council was appointed in 1904 which advises on questions of ordnance, medical provision, personnel, and all relevant issues. The Admiralty Board is the successor of the Lord High Admiral. The Board, unlike many Boards, actually meets, and is an active organisation. The Air Force comes under the control of the Secretary of State for Air, who took over in 1918 the duties of the President of the Air Council. Since 1919 the Meteorological Office has been attached to the Air Ministry, and weather forecasts issued by the B.B.C. are made under its authority. Pensions for persons disabled as a result of national service are provided for by the Ministry of Pensions and National Insurance.

During the period when the war clouds were beginning to darken the skies of 1938 and 1939, preparations were made for war, involving the creation of a Ministry of Civil Defence, afterwards abandoned, and also a Ministry of Supply, which, designed to take a share of the growing burdens of the Board of Trade, was retained after the conclusion of hostilities as part of the machinery for reconstruction. The Ministry of Supply was originally given powers similar to the Ministry of Munitions set up in 1915. The main purpose of the Ministry of Supply was to allocate materials required for war production, in accordance with a scheme of priorities established by the Government and changed according to the exigencies of the moment. The Minister had power to take over factories where production was unsatisfactory, to commandeer storage, to examine and fix contract prices, and to buy, sell, or produce, any articles for the public service. The stringency of post-war years led to the retention of the Ministry for peace-time allocation and control of raw materials. Steel, for example, was provided to manufacturers via the Ministry. The main

business of the Ministry, however, was to organise ordnance production, and to experiment with new types of weapons. In 1959 most of the work in the Ministry of Supply was transferred to the new Ministry of Aviation, and the Ministry of Supply was wound up.

### **Transport**

The Ministry of Transport was created in 1919 to regulate railways, canals, roads, and traffic. By Order-in-Council, powers relating to these matters were transferred from other departments to the Ministry. Class I roads are the Ministry's direct responsibility, and in providing and maintaining other roads, the local authorities are subject to a measure of control by the central department. The Board of Trade was concerned with canals until 1919, when the Ministry of Transport took over these duties. During the interval between the two World Wars, the Ministry of Transport acquired powers over railway rates, standardisation of plant, inspection of rolling stock, and enquiry into accidents. During the Second World War a new title was invented—the Ministry of War Transport. The new Ministry took over the duties of the old Ministry and acquired many additional powers to regulate transport in the interests of a community faced with serious peril. The conclusion of the war led to the old title being resumed. But duties continued to be heavy and the Government-sponsored legislation of 1947 provided for vastly increased responsibilities in supervising the bodies set up by nationalisation of the major forms of transport. One important section of nationalised transport was outside the scope of the Ministry. The Minister of Civil Aviation took over from the Secretary for Air the management of the public corporations to which were granted the monopoly of British airlines, both internal and external. In 1951 there was a single Minister of Transport and Civil Aviation, and a little later the Ministries themselves were amalgamated. A separate Ministry of Aviation was established in 1959.

### **Labour and National Service**

The Ministry of Labour (from 1939 to 1959 the Ministry of Labour and National Service) was set up during the First

World War. By an Act of 1916 a number of sub-departments of the Board of Trade formed the nucleus of the new Ministry. Stray functions of other Ministries, relating to labour and industry, were transferred to the Ministry of Labour, and it became responsible for the organisation of Employment Exchanges, Unemployment Assistance, Trade Boards, and Industrial Relations. There is a Factory Inspectorate to enforce the Factory Acts. In 1938 it was decided that the Ministry of Labour should undertake duties concerned with enrolment for national service. During the Second World War, the Ministry worked in close co-operation with the "Services" departments. With the post-war need for large armed forces, conscription was retained for some years. But industry and agriculture were in urgent need of men. The Ministry was therefore active in dealing with postponement of call-up for workers in key industries, but with the ending of call-up in 1960 this work came to an end. A further duty of the Ministry is to act as agent of the Foreign Office in the issue of passports.

### **National Insurance**

The Ministry of National Insurance was set up in 1945 to deal, in due course, with a vast, co-ordinated scheme of provision for unemployment, old age, and sickness. Beginning with a comparatively small staff, this Ministry expanded rapidly as it took over a variety of duties from other departments, preparatory to administering the scheme envisaged under the National Insurance Act, 1946. The Act was not due to come into full force until 1948, but many of the new arrangements were put into operation in 1946 and 1947. Powers were also given to the new Ministry to administer the Industrial Injuries Insurance scheme, which was designed largely to supersede the older system of workmen's compensation. To assist the Minister, he was empowered to set up a National Advisory Committee, regional authorities, and local offices. Friendly Societies were no longer to act as agents of the central authority, but their staffs were offered Government positions. In 1953 the Ministry of Pensions was merged

with the Ministry of National Insurance under the title of the Ministry of Pensions and National Insurance.

### **Trade, Power, and Food**

The Board of Trade was originally a committee of the Privy Council. As the Committee for Trade and Plantations, it existed in the seventeenth century; its present title dates from 1862. The principal officers of State and a good many dignitaries, including the Archbishop of Canterbury, are members of the Board, but they never meet, the summoning of the Board having fallen into desuetude. In 1918 the Board of Trade was reorganised into two main sections: the Department of Public Services Administration, and the Department of Commerce and Industry. The first department dealt with company and insurance activities, and with bankruptcy; the latter with industries, manufactures, mines, overseas trade, and commercial relations. The Board of Trade nowadays has (1) an overseas commercial department, (2) a home industries department, and (3) a regulatory department, the last-named being concerned with insurance, patents, and custody of enemy property.

The importance of mines led to the appointment in 1920 of a Parliamentary Secretary for mines. The powers of the Home Office in regard to mines were transferred to the new Secretary, who included among his duties the supervision of miners' safety and welfare, and the exploitation of mineral resources. The department of the Board of Trade concerned with mines was the nucleus of the Ministry of Fuel and Power, created during the Second World War to co-ordinate the use of coal, oil, and other forms of power, in the best interests of the nation. In 1957, the Ministry was re-named the Ministry of Power and its functions were extended to include the development of atomic energy.

The Food (Defence Plans) Department of the Board of Trade expanded its organisation just prior to the Second World War and made large purchases of food to meet the difficulties that might arise out of a blockade. During the war the problem of food distribution became acute, and with the introduction of food rationing the Ministry of Food emerged

as a full Government department. For convenience, the Food Offices set up in different parts of the country dealt also with clothes rationing. An elaborate organisation persisted in the post-war period, but with the abandonment of food rationing, the Ministry became less important and was amalgamated with the Ministry of Agriculture and Fisheries in 1954.

The need for the best possible marshalling of the country's resources, led, in 1951, to the setting up of the Ministry of Materials, which handled business formerly within the province of the Board of Trade and the Ministry of Supply. The new Ministry dealt with sulphur, paper-making materials, jute, and some non-ferrous metals. Responsibility for cotton and wool were shared between the Ministry and the Board of Trade, the latter taking over residuary functions when the Ministry of Materials was dissolved in 1954.

### **Agriculture**

The Ministry of Agriculture and Fisheries had its fountain-head in an advisory body set up in 1794, but no permanent department was set up until 1889, when the Board of Agriculture was created. In 1903 the duties of the Fisheries Department of the Board of Trade were transferred to the Board of Agriculture, and in 1919 the importance of the Board was recognised by elevating it to the dignity of the Ministry of Agriculture and Fisheries. At the same time, every County Council (except the L.C.C.) and every County Borough Council was required to set up a County Agricultural Committee. These committees are concerned with diseases of animals, land drainage, and small holdings. Agricultural education may also come within the province of the committees. During the Second World War, County War Agricultural Executive Committees were created to supervise the work of farmers, with special regard to the ploughing up of grass land and its conversion to arable. Farms were placed in different categories according to degree of efficiency in farming, and in cases of poor farming or failure to grow crops as directed, the committee took over farms and became responsible for running them. After the war the executive committees were retained to assist in peace-time production.

In addition, a National Agricultural Advisory Service was set up, which attracted a considerable number of the paid personnel attached to County Agricultural Committees. The new organisation was supplementary to the existing organisation and was designed to provide advice on animal breeding, crop cultivation, and other technical aspects of husbandry.

In Mr. Churchill's Cabinet (1951), the Lord President of the Council co-ordinated the work of the Ministry of Agriculture and the Ministry of Food. This "overlordship" was abandoned in 1953, but in 1954 the Ministries were amalgamated.

### **Education**

The provision of most forms of education, except for University provision, is the business of county and county borough education authorities, supervised by the Ministry of Education. A Board of Education, replacing a Privy Council committee, was set up in 1899, but was a façade only. Composed of high-ranking Ministers, it never met. Under the Education Act, 1944, the Board became a Ministry. It issues codes of regulations, and exercises control by inspection and by grants. Local authorities are required to submit schemes to the Ministry to show that the various educational facilities envisaged in Acts of Parliament are provided either directly by the authority or by Government-approved organisations working in the educational field. In the case of many schools, the Ministry has direct relations and inspects or provides grants without using the local authorities as intermediaries. Most of the educational institutions are brought into a loosely co-ordinated system, with the Ministry safeguarding standards of teaching and remuneration.

### **Health and Planning**

The Ministry of Health, created in 1919, superseded the Local Government Board which had been set up in 1871. It was one of those Boards which never met, and its disappearance was only a formality. The new Ministry took over the duties of the Local Government Board (mainly Poor Law and Sanitation), and acquired also the powers previously exercised by the Board of Education in regard to maternity

and infant welfare. Attached to the Ministry are a large number of medical officers, and these work in co-operation with the medical officers of health appointed by local authorities. The National Health Scheme, which was planned to cover the medical needs of the whole population, took effect in 1948 and is supervised by the Ministry of Health in conjunction with local authorities, county executive committees, and regional boards. In 1953 some functions of the Ministry of Pensions were transferred to the Ministry of Health, *e.g.* in connection with artificial limbs for ex-servicemen.

The second major concern of the Ministry of Health used to be housing. But in January 1951 this work was transferred to the Ministry of Local Government and Planning, re-named in November 1951 the Ministry of Housing and Local Government. The Ministry provides central government support for housing schemes undertaken by local authorities. Compulsory purchase of land is possible under the Acts of 1930 and 1946, the final authority confirming the order for purchase being the Minister. The general housing programme is the business of the Ministry, which provides statistics periodically, showing the number of houses erected against the number of houses planned over given periods. Grant aid to local authorities for housing depends on satisfying the Ministry's conditions in regard to accommodation provided, cost of building, and other factors.

Closely allied with the Ministry of Housing and Local Government is the Ministry of Public Building and Works, which developed out of the Board of Works and Buildings. This had control over royal palaces and various Government buildings. In time the Board came to deal with licensing and allocation of materials, and rose to the status of a Ministry.

The functions of the Ministry of Health in regard to town and country planning were transferred in 1944 to the Ministry of Town and Country Planning. Three principal problems engaged the attention of this Ministry: first, the problem of building-plans for blitzed areas; second, the problem of planning areas of new development under the New Towns Act of 1946; and third, the problem of dealing with normal expansion in town and country so as to prevent the abuses of



unregulated ribbon development and unaesthetic developments in the country. The Ministry was merged in 1951 into the Ministry of Local Government and Planning, later re-named the Ministry of Housing and Local Government.

The work of the Ministry is analysable as follows: —

- (1) the supervision of housing, and the planning of new towns;
- (2) the planning and control of the use of land;
- (3) the supervision of environmental services, *e.g.* water supplies and sewerage schemes;
- (4) the general oversight of the work of local government;
- (5) the supervision of local government finance.

In 1957, the Minister of Housing and Local Government became also Minister for Welsh Affairs.

### **The Post Office**

The Postmaster-General is responsible for the administration of the Post Office. The position is a Ministerial one, but it rarely carries with it a seat in the Cabinet. The business of carrying the mail is a State monopoly, and its organisation on a satisfactory basis goes back to 1840, when penny postage was introduced through the efforts of Rowland Hill. The Post Office has normally been able to show a large surplus in peace-time, though not in war-time. It has recently been given much greater commercial freedom, *i.e.* it is not subject to the strict financial control exercised over the other departments by the Treasury.

The Post Office is the classic example of efficient public enterprise, and has been generally cited by Socialists to show that a Government enterprise need not of necessity be either corrupt or dilatory.

The activities of the Post Office are many and various. Besides being the sole carrier of letters and telegrams, the Post Office manages the telephone system. Contributions in respect of National Insurance Acts are effected by stamps purchased at the Post Office. The issue, payment, and transmission of money by postal orders is a large part of Post Office work, especially with the development of football pools. It maintains the widely used Post Office Savings

Bank. Through the Post Office a variety of pensions are payable, and under the Family Allowance Act of 1946 payments are made to mothers in respect of dependent children. Deeds involving the conveyance of property are received for stamping; Government Stock may be bought; and National Savings Stamps and Certificates are issued.

### **The Lord Chancellor and the Law Officers**

The Lord Chancellor is the guardian of the Great Seal, under the authority of which Parliament is summoned. James II thought to throw the Government into confusion by casting the Great Seal into the Thames before he fled the country in 1688, but this did not prove a serious barrier to the summoning of the "Convention" Parliament, which undertook the duties formerly exercised by Parliaments summoned in the official way. The use of the Great Seal is one of the many formal duties attached to the office of the Lord Chancellor: they include also acting as one of the Commissioners for giving the royal assent to Bills, and for opening and proroguing Parliament when the King is absent. A more important duty is to act as Chairman of the House of Lords, but in this capacity he has less disciplinary authority than the Speaker in the House of Commons. The Speaker, for example, decides who shall speak when a number of people are anxious to do so, but if two people rise to speak together, the House of Lords itself decides who shall speak, though the direction of the Lord Chancellor would generally be taken.

On the judicial side, the Lord Chancellor is the head of the judiciary. He appoints judges of the High Court and of the County Court. He also appoints J.P.s. He is head of the Chancery division of the High Court, the Court of Appeal, and the House of Lords, though he rarely sits in any of these courts except the Lords. He presides over the Judicial Committee of the Privy Council, which determines appeal cases from ecclesiastical and colonial courts and from courts of certain Commonwealth countries. He also co-operates with the Scottish Secretary in appointing the Council on Tribunals.

The Lord Chancellor, apart from being the general guardian of "lunatics and infants," has one other important

duty: he has the patronage of something like seven hundred benefices in the Church of England. For this reason a Roman Catholic is by law disqualified from holding this position.

The Attorney-General and Solicitor-General, who are the chief law officers of the Crown, are barristers. They are the heads of the "bar" or whole body of barristers. Though they may not engage in private practice, they are allowed to charge fees for work done, in addition to their substantial salaries. They represent the Crown and conduct prosecutions and civil suits in which the Crown is interested. They take part personally in a few of the most important cases. The rest are undertaken by nominees. The Attorney-General and Solicitor-General are members of the House of Commons, but they are summoned to the House of Lords, where they attend to give advice on peerage cases. Similar duties for Scotland are carried out by the Lord Advocate and the Solicitor-General for Scotland.

### **Public Relations**

During the Second World War, following the precedent set in the First World War, a Ministry of Information was set up which had the task of organising news censorship and providing information at home and abroad about the British war effort. At the end of the war, the Ministry was disbanded, but the Central Office of Information continued some of the work done by its predecessor. The C.O.I. is a Government agency which provides other Government departments, at their request and under their policy direction, with information material in the various media, *e.g.* films, press services, publications, posters, advertising campaigns, and photographs. It also carries out social surveys for other departments.

Many Government departments have public relations or information divisions to smooth the relations between the departments and the general public and to organise for themselves a two-way traffic of knowledge about citizen wants and departmental provision. The Post Office, Ministry of Health, and Home Office began the practice shortly after the First World War, and all major departments have followed

their example. Thus, by a variety of ways, the Government as a whole, and the departments separately, hear the complaints of the citizen and endeavour to co-operate in solving the problems of the hour.

## CHAPTER VII

### NATIONAL FINANCE

#### **The Treasury**

The political head of the Treasury is the Chancellor of the Exchequer. For some considerable time it has been usual to appoint a Chancellor of the Exchequer and the other Treasury Ministers from the members of the Commons. The Chief Secretary and the Financial Secretary are particularly concerned with departmental estimates. There is also an Economic Secretary to the Treasury to assist the Chancellor of the Exchequer in his work, and to strengthen the link between the Treasury and the Board of Trade. A number of other M.P.s are appointed to offices in the Treasury, but these are not financial appointments. The Parliamentary Secretary and the Junior Lords act as Government Whips.

At the head of the permanent Treasury staff are the Joint Permanent Secretaries to the Treasury, one of whom is the Head of the Home Civil Service and has a general oversight of all civil servants, for example in deciding issues concerned with promotion and staffing. To assist the Permanent Secretaries is the Controller of Establishments, who ranks for salary purposes with the permanent heads of other State departments. Another important official is the Controller of Finance and Supply Services, who is largely responsible for the control of departmental expenditure. With the help of this branch of the Treasury, the Chancellor of the Exchequer is able to assess the soundness of the estimates of the spending departments. When, for example, the Admiralty or the Ministry of Health put forward their estimates, they have to satisfy the control branch of the Treasury that their proposals are reasonable.

Treasury control, however, is less detailed than was the case in the nineteenth century. Accounting officers are no longer officials connected with the Treasury, but are the Permanent Secretaries of the departments concerned. There is also a rather shadowy control over public corporations.

Closely allied with the Treasury are the Board of Inland Revenue and the Board of Customs and Excise. Though separate departments, they have the same political head, *i.e.* the Chancellor of the Exchequer. The chairman of the Board in each case is a permanent civil servant who in another department would be described as a Secretary. The chief business of the Board of Inland Revenue is the collection of taxes other than imports laid upon commodities. Of these, the most important is income tax. Another tax with which the Board is concerned is surtax. The Board of Customs and Excise collects import duties and also duties levied on goods produced inside the country, such as beer and spirits. Purchase tax is also dealt with. With more people paying income tax, and with the imposition of more duties, the work of these Boards has grown steadily.

### **The Budget**

As soon as is convenient after the end of the financial year, which occurs on March 31st, the Chancellor of the Exchequer presents a financial statement to the House of Commons. Such matters as the capital value of Government assets are ignored, and also arrears of income tax and the like. Two of the main items in the Budget are precise figures of expenditure for the year ending March 31st and revenue for the same period. The other two main items are the estimates of expenditure for the new year and the estimated revenue for the same period. Estimated payments out of the Consolidated Fund are in part interest on money borrowed in the past and in part expenditure on various "supply" services. The estimates of the departments are usually drawn up during the previous autumn and have to secure Treasury approval before being considered in Parliament from February onwards, and included in the survey by the Chancellor of the Exchequer the following April. Pre-Budget information is in the highest degree secret, more particularly as regards changes of taxation. Allegations of leakages are rarely substantiated. Dr. Dalton, who admitted giving away minor items beforehand in 1947, felt it necessary to resign his office as Chancellor.

The Budget of April 1946 illustrates usefully a number of important aspects of financial policy and procedure. The country was just emerging from the crippling effects of the Second World War, and the Budget was concerned with the transition from a war to a peace economy. It is a generally-accepted principle that in war-time it is undesirable to attempt a "balanced" budget. The enormous expenditure of war is not easily met by taxation. The general principle of the war years was to secure at least half of the country's expenditure out of revenue, the remainder being raised by loans, partly internal and partly external. The effort of the Government during 1946-47 was to bring outgo and income gradually into line so that by 1947-48 the Government would not need to resort to any serious amount of borrowing.

The revenue for 1945-46 was shown as a little more than half of the expenditure. The period included the termination of the war with Japan; and the brake of economy could be applied only with difficulty for the next few months. The Chancellor of the Exchequer estimated the position for 1946-47 as income around four fifths of expenditure. Roughly speaking, the Chancellor hoped, for every £1 of expenditure, to provide more than 16 shillings out of revenue against 12 shillings in the previous year. As it turned out, this estimate proved reasonably good, and in 1947 the Chancellor, by retaining high rates of taxation, budgeted for a surplus. In succeeding years, *e.g.* in 1950 and 1955, some large surpluses were obtained. It was therefore found possible to make gradual reductions in taxes. But the process of reducing taxation was relatively slow because the Government embarked on heavy expenditure to assist projects of local authorities and public corporations as well as to promote schemes of its own.

The Chancellor is concerned with the position of the country in relation to the rest of the world, as well as with the position of the Government in relation to the citizen at home. A new principle of taxation has emerged which seems likely to have permanent importance. The Budget of 1947 was designed to discourage expenditure by citizens on goods partly or wholly derived from purchases made abroad, especially in

hard-currency areas, and to encourage the production of goods for export to the same areas. Owing to the indebtedness of Britain to many countries as a result of war purchases, and the enforced sale of some of her principal foreign investments, the difficulty of balancing accounts internationally had become, as never before, a serious problem. High purchase taxes were retained in most cases, though some remissions were announced on necessities. Married women were encouraged to work and to step up production, by being allowed larger earnings before being liable to income tax.

To maintain the position, tax reductions were few until 1953, when the Chancellor of the Exchequer introduced an "incentive" budget. Further budgets along similar lines followed, and the proportion of the national income taken in taxes by the Government has steadily decreased. But taxation remains high, not only because of the social services and defence, but also because the Government is anxious to keep home sales down and overseas sales up. In this way it is hoped to maintain a favourable balance of payments and build up investments abroad.

### **The Finance Bill**

The Finance Bill, embodying the proposals of the Government for new taxation and adjustments of existing taxes, normally takes several weeks before it reaches its final stage. But from the time that the Chancellor of the Exchequer announces changes proposed in the incidence of taxation, those changes have effect in accordance with the Provisional Collection of Taxes Act, 1913. The usual practice before that time was for the renewal of old taxes or the imposition of new ones to be approved by resolution of the House of Commons in Committee of "Ways and Means," on the day when the Chancellor of the Exchequer made his Budget speech. It was the practice to treat this resolution as having the force of law. Inland Revenue and other departments acted on this assumption and collected taxes in accordance with the new rules. But, as a result of a test case in Chancery, it was decided that a resolution in the House of Commons was not enough. Only



by Act of Parliament could new taxation be imposed. Hence the Act of 1913.

A considerable amount of taxation is imposed without a day appointed for its termination. For such cases, the Provisional Collection of Taxes Act is not necessary. But income tax is on an annual basis and would come to an end altogether if not re-imposed each year. There are usually considerable changes made in Customs and Excise, and purchase tax. It is obvious that unless changed rates of taxation were put into effect immediately there would be a serious dislocation of trade in the interval between announcements of proposals and legal imposition of taxes. The bulk of the Chancellor's proposals are ultimately confirmed, as a rule, and traders normally assume that the proposals will become effective, at any rate for the year. As the Finance Bill proceeds on its way through Parliament, however, a number of changes do occur. If the Government is defeated in Committee, it should resign, but a defeat is most unlikely for a Government based on a majority party. Nevertheless, the arguments made in debate nearly always lead the Government to amend the original proposals. They then go through without difficulty. When changes advantageous to the citizen are made in this way they may be made applicable from a specified future date or they may be retrospective.

After the arduous Committee stage is over, the Finance Bill generally slips through the third reading with ease. The House of Lords normally gives a formal assent, and the Bill becomes law as soon as the Queen agrees, which she does, as for all Bills, by sending Black Rod to the House of Commons to summon members to the bar of the Lords to hear the words of formal approval.

### **The Appropriation Bill**

Estimates by the Chancellor of the Exchequer and his colleagues, in conjunction with Treasury officials and heads of spending departments, are prepared in an atmosphere of considerable secrecy. They go on for a long time and are often conducted with a certain acidity. The departments are required to explain in detail what they need and to justify

the proposed expenditure with elaborate argument. Here the accountants of the department find plenty to do. Obviously some of the proposed expenditure must be regarded as confidential to an extreme degree. For example, expenditure on atomic research must largely be taken on trust by political chiefs. Experimental work for all the armed forces is subject, in greater or lesser degree, to the shroud of secrecy. This is an established convention, and political heads of departments do not expect in all cases to receive all the relevant information. It is reported of Lord Fisher, when he was at the Admiralty, that he was able to spend a great deal on projects about which the First Lord of the Admiralty knew nothing at all. During war-time the need for secrecy is plainly much greater than in peace-time. At such a time Service chiefs may provide little more than outline proposals. Even in peace-time, control by the Commons is slight, especially as from 1955 Air Force and Army Acts operate for five years. There is therefore opportunity for detailed amendments only at long intervals.

Estimates begin to be considered by Parliament early in each year. Defence estimates are dealt with by the appropriate Minister, and the Civil Estimates by the Financial Secretary to the Treasury. "Supply Days" are weekly from February to August, and because many of the estimates are not approved before the Government's financial year ends, one or more Consolidated Fund Bills are necessary to provide for interim expenditure until the general Appropriation Act goes through in July or August to cover the year as a whole. In Committee of Supply, M.P.s give consideration to the Government's proposals. But there is a tendency in a Committee of the whole House to deal at length with general policy. The subjects for debate during the twenty-six Supply Days are, by convention, chosen by the Opposition; and an opportunity is taken to attack the Government where it is most vulnerable. In the past, Governments have collapsed as a result of adverse votes on a Budget proposal, *e.g.* the Liberal Government was defeated in 1885. But time has effected a change in conventions, and rebel members of the party in power would try nowadays to avoid pulling a Government down.

In accordance with Standing Orders, only twenty-six days may be spent on the estimates. After this, the Committee of the House is asked to approve the estimates by a straightforward "Yes" or "No." Some have perhaps been accepted already. The rest are dealt with one after the other in dreary procession until all the estimates are accepted. This is a rough picture of peace-time methods. In war-time, huge Votes of Credit go through with no details supplied at all about how the money is to be spent. But even in war-time the formalities are observed, and in peace or war there are still some rivers to cross. The Bank of England has not been authorised to pay out what has been sanctioned by the resolution in the House of Commons. The sanction is contained in the Appropriation Bill, which must be preceded by the approval of the Committee of Ways and Means. Seeing that the House in Committee of Supply has just approved all the estimates, the approval of the House, sitting in Committee of Ways and Means, is the merest formality. The Speaker goes out, the Chairman sits at the table, the Speaker returns, and so on until the picturesque ceremony of mace-bearing is over. Then the Financial Secretary to the Treasury goes forward with the Appropriation Bill, officially entitled the Consolidated Fund Bill. It must go through the readings and Committee stage of other Bills. But this is hardly likely to be unduly prolonged. On some summer day the task is likely to be completed, and the Bill, after formal presentation to the Lords, receives the royal assent and becomes law as the Appropriation Act.

### **The Consolidated Fund**

The Consolidated Fund is the banking account of the Government at the now nationalised Bank of England. The nationalisation of 1946 did little more than transform a nominally private banking institution into what it already was in reality—the Government's bank. For a long time the Bank of England had paid a fixed dividend; it had worked in close association with the Treasury; it was prohibited from making profits on note issues; and the phrase "as safe as the Bank of England" had been the equivalent of rock-like security. In fact, the Bank of England had in earlier days

passed through stormy weather, but its position was unassailable and unassailed long before nationalisation took place. The Government's money at the bank was therefore in no serious danger before it was nationalised. But, as the Chancellor of the Exchequer said, "We plan for full employment and full production, for an expansive economy, for an increasing trade both at home and abroad; and especially, in the early years of reconstruction, against restriction and in favour of abundance. If this is to be done, we must have the Treasury, the Central Bank, and the clearing banks all pulling together. We cannot afford even the possibility of their pulling different ways." So the Consolidated Fund and its management was made doubly secure.

Money is paid into the Consolidated Fund by cheques and drafts, and payments out are made in the same way. When funds are low, the Government must borrow. On such occasions, it seeks short-term advances, to be repaid when revenue comes in more abundantly. Such borrowings are limited in amount and must be sanctioned in the Appropriation Act. "Treasury Bills" are sold, and varying rates of interest are paid on them. They are nearly the equivalent of currency because the sums they represent are repayable shortly after borrowing has occurred. Government income must normally be paid into the Consolidated Fund. Even small sums flow in and are not normally set against expenditure. Customs and excise duties, income tax, post office receipts, and revenue from crown-lands, are all paid into the Fund, and out of it flow salaries of civil servants, payments to contractors, pensions, allowances, and rebates on overpaid taxes. If departments require more money than the Appropriation Act authorises, they must provide Supplementary Estimates (normally done in the middle of the year and again at the beginning) and secure Consolidated Fund Acts, to enable the money to be withdrawn. But they cannot normally carry forward money authorised but unexpended. If estimated expenditure has not been reached, they must nevertheless start on April 1st without being able to carry forward the unexpended surplus.

## The National Debt

The National Debt consists of the total sum of money borrowed by the Government under statutory authority and outstanding at any given time. Until the Bloodless Revolution of 1688, the King borrowed on his own authority for the needs of the State, but the difficulties arising from this procedure and the desire of Parliament to limit the power of the Crown led to the establishment, in the reign of William III, of the Bank of England and the National Debt. Through the Bank, which was set up as a powerful financial corporation in close contact with the Government, large sums were raised to meet the deficit on Government accounts during the war with France. The original intention was to pay off the sum borrowed when peace returned, but, though something was paid off, the frequent recurrence of war prevented the wiping out of the Debt, which became a permanent feature of Government finance.

Sums borrowed for a long term and without any date fixed for repayment became known as the Funded Debt. These sums were used to balance the Consolidated Fund, and were therefore known as Consolidated Funds. The abbreviation "Consols" has persisted for borrowings of the Government by undated stocks bearing a fixed rate of interest. Early borrowings were at high rates, but rates were gradually reduced for new borrowings, and when rates fell sharply the Government paid off capital sums at its own option and borrowed again at cheaper rates. During the prosperity period of the nineteenth century, when serious warfare seemed remote if not impossible, the rate fell to  $2\frac{1}{2}\%$ . Considerable borrowings were made at this rate, and  $2\frac{1}{2}\%$  Consols can still be bought, but at prices much below their face value. Unless interest rates for long-term borrowing fall below  $2\frac{1}{2}\%$ , it is not likely that the Government will repay these old loans, since new borrowings would have to be at the same rate or higher. But included in the Funded Debt are a number of Conversion Loans, which have replaced stocks bearing  $3\frac{1}{2}\%$  and  $4\%$ . The efforts of the Government were for a time aimed at reducing high-class security rates to a low level, and this campaign, despite some set-backs, met with a measure of

success—the reason being that in the war and early post-war period, the Government so dwarfed other borrowers that the competition of new private issues did not seriously affect the general rate. Later on, with business expansion, interest rates rose to higher levels.

Dated bills and dated stocks constitute the major portion of the Unfunded Debt. Much of the stock has dates fixed within which the Government must repay capital. 2½% Funded Loan was repayable between 1952 and 1957. That is to say, it could not be repaid before 1952, but it had to be repaid not later than 1957. National Savings Certificates, which are withdrawable on demand or may be left to accumulate at compound interest, are included in the Unfunded Debt --the essential difference between Funded and Unfunded Debt being that in the former case the option to repay capital by the Government is absolute. It may repay at an early date, a late date, or not at all. In Unfunded Debt, the Government is under obligation to repay when certain conditions are fulfilled. In recent years a high proportion of borrowing has been in this form.

An important part of the total Debt is external. The internal funded or unfunded debt is relatively unimportant from the point of view of the nation, though it affects the lives of particular individuals very considerably. But the external debt involves interest payments and capital repayments which cannot be adjusted by devices of taxation, redistribution, income tax allowances, and all the other machinery available to prevent maladjustment. High exports are needed to meet obligations on foreign loans, to pay interest charges and lessen the volume of debt by repayment. Adjustments outside the agreed charges and repayment are only possible by negotiation or downright repudiation.

### **Government Assets**

Although the Chancellor's Budget figures ignore assets, these are increasingly important in the national economy.

Set against the external debt and other liabilities, including British guarantees of loans to foreign countries, are considerable Government assets abroad. Owing to the needs of war,

investments made by the Government in Commonwealth loans fell sharply. They had to be sold to meet current commitments. Large sums are, however, owing from numerous foreign countries, including France, Italy, and the U.S.S.R. The chances of ultimate repayment are in many cases very small. In the light of past experience, it would be unwise to count on steady maintenance of interest payments or full return of capital. Indirectly, holdings abroad of British subjects domiciled in the United Kingdom are also important to the Government. During the war period, these holdings were in many cases compulsorily exchanged for internal debt stock, thus releasing for the advantage of the Government account considerable sums of foreign exchange. Peace-time did not bring immediate freedom of sales for such overseas holdings as individuals and companies still possessed. A potential asset therefore remained to assist the Government's foreign exchange position.

The Government has also very considerable assets at home. The Government owns many public buildings, including post offices; and public corporations have immensely valuable property. When nationalisation occurs, the public corporation acquires the assets of the company or companies nationalised. For example, when the Bank of England was nationalised, the capital stock of the Bank, nominally £14,500,000 paying usually a dividend of 12%, was acquired for £58,000,000 of Government stock at 3%. When the coal mines were nationalised in 1946-47, a much larger and more complicated transaction was involved. A large volume of physical assets passed into the hands of the National Coal Board—Government stock to be issued in accordance with a complicated system of valuation. In some cases Government stock is issued against what were assets up to the time of issue, but are difficult to describe as assets in the ordinary sense of the term after the completion of negotiations. The purchase of doctors' practices, proposed in the National Health Insurance Act is an example. While this may be considered to be nationally advantageous, it cannot be described as a revenue-producing transaction.

### **Debt Redemption**

The "Old Sinking Fund" arrangement provides that all surplus on Government account at the Bank of England for any financial year may be used to pay off a portion of the National Debt. If Government expenses are less than Government revenue, the difference may be a considerable sum for the "Old Sinking Fund." The Treasury may either purchase stock on the market or pay out stock-holders who hold bonds which the Government is entitled by the original terms of issue to repay. Parliament, however, being the supreme arbiter, has not always followed the rule, and surpluses have in fact sometimes been used for new expenditure.

In 1865 a New Sinking Fund arrangement was made by which a fixed sum was allocated out of revenue for the purpose of redeeming portions of the National Debt. By some hopeful financiers this was expected to extinguish the debt in stages. But new commitments arose; war led to huge increases in the debt, and the general movement has been towards greater indebtedness.

Private individuals have on occasion become alarmed at the prospect of burdening posterity with debt. In 1927 a donor provided about half a million pounds to accumulate at compound interest and to be used ultimately to redeem the debt. In accordance with the Finance Act of 1928, income tax is not payable on the fund's revenue, which had by 1941 enabled the capital sum to reach £1,000,000. The prospects of extinguishing the National Debt by the National Debt Redemption Fund appear, however, very slight.

### **The Civil List**

Prior to the Revolution of 1688, the revenue of the State could be divided into Parliamentary income and hereditary royal income. The former depended on Parliamentary sanction, the latter was independent of Parliamentary grant. After 1688, Parliament coupled the hereditary revenues with income derived from excise duties to meet the expenses of the Court, which included the upkeep of ambassadors. This was voted to William III and Mary for life, and was known as the Civil



List. George III and later monarchs surrendered their claims to these fluctuating revenues and received a fixed amount as a Civil List. This was for the personal expenses only of the royal family. As a rule the royal allowance has been considerably less than the surrendered hereditary revenues, mainly owing to the fact that, though royal expenses have risen, the rise in some of the hereditary revenues has been spectacular.

For the King's "privy purse," his Household costs, and the royal bounty, a fixed sum is payable annually. This was reduced by £60,000 in the case of Edward VIII, as he was unmarried during his reign. Separate allowances are made by way of annuities to other members of the royal family, and these are normally increased when princes or princesses are married.

### **Checks on Misappropriation**

All expenditure must be authorised by Act of Parliament. Under statutory authority, revenue is paid into the Consolidated Fund at the Bank of England, and spending departments have an elaborate procedure to follow to obtain money from the Fund. Treasury sanction is necessary, and then approval must be sought from the Comptroller and Auditor-General, who must not be a member of the Commons or the Lords. He is an official, independent of the Government, who holds office "during good behaviour." Like the judges, he can be removed only by address of both Houses of Parliament.

Withdrawals from the Fund must be made, in the first place, by the Treasury. One of its officials must send a demand to the Comptroller and Auditor-General to authorise payment. The authority is given as soon as it is ascertained that there is statutory sanction. This done, the Treasury directs the Bank of England to transfer the sum required from the Exchequer Account to the "supply account" of the Paymaster-General. The department concerned may then draw against this account, but only up to the sum credited and for the purpose specified.

Besides acting as controller, the Comptroller and Auditor-General acts as auditor of the public accounts. The various departments submit what are known as "Appropriation

Accounts," showing exactly how they have spent their money. These accounts are examined and reports are made to Parliament. The House of Commons refers these reports to a standing committee known as the Public Accounts Committee. Finance Accounts, showing the amounts received and issued, are also laid before Parliament by the Treasury. The House of Commons is thus acquainted with the way in which detailed expenditure has been made. Owing to the complexity of accountancy, the average M.P. understands somewhat imperfectly how money has been spent, but any irregularity would probably be discerned by financial experts, of whom there are a few who secure election to the House of Commons. Formal as the proceeding is, the presentation of accounts is a real safeguard against irregular payment.

In theory, Parliament has complete control over Government finance. From the examination of departmental estimates to the final check on the work of the Comptroller and Auditor-General, the House of Commons has opportunities of dealing with Government expenditure. But it is universally admitted that control is slight. A practice adopted in 1960 allows for autumn debates on variations between Government expenditure in the two preceding years; and this may help a little to check the departments as they prepare their estimates for the next year. A further new practice gives the Commons a chance to know in the spring what borrowing is thought desirable for the nationalised industries. But there are, as yet, no signs that full use will be made of available opportunities.

## CHAPTER VIII

### DEFENCE

#### **The Navy**

The "Senior Service" is the Royal Navy. For a sea-girt island it is natural to find the navy regarded as the first line of defence. The responsible State department is the Board of Admiralty, which is the successor to the office of Lord High Admiral, long since abolished. The Board consists of two Parliamentary chiefs: the First Lord and the Civil Lord; together with a number of high-ranking naval officers, including five Sea Lords; and a Permanent Secretary. The Board, which meets frequently, is a consultative body concerned with the general work of the navy. All the Lords are theoretically equal in status. Depending on personality, the First Lord, who is a civilian, or the First Sea Lord, who is Chief of Naval Staff, may be dominant. The First Lord of the Admiralty has not been a member of the Cabinet since the appointment of a Minister of Defence in 1946.

The First Sea Lord and the Vice-Chief of Naval Staff are the chief officers concerned with "operations." This division deals with matters relating to distribution of naval forces, and fighting efficiency. Strategy and tactics, development and use of materials, types of vessels to be built, methods of protecting ships, are among the questions coming before the operations division.

"Maintenance" is the work of the other four Sea Lords and of the Civil Lord. The Second Sea Lord is Chief of Naval Personnel; the Third, known as Controller, is concerned with the construction and alteration of ships. The Fourth is responsible for supplies and transport, and the Fifth for ship, aircraft, and weapon requirements.

The Civil Lord assists the First Lord in his Parliamentary and departmental duties. Financial business is dealt with primarily by the First Lord and the Permanent Secretary.

Naval forces are divided into a number of fleets or commands, both home and overseas. A women's force was added in the war period, known as the Women's Royal Naval Service.

The British Navy was, prior to the First World War, the largest and most efficient navy in the world. American expansion during the war period led to the acceptance by the British Government of a new position in which the U.S.A. was put on terms of equality. During the Second World War, the U.S. Navy grew much more rapidly than the British Navy, and came to have a far greater tonnage than that of any other navy. The two navies worked in close co-operation then, and have co-operated since.

### **The Army**

Under the Bill of Rights, "the raising or keeping of a standing army within the Kingdom in time of peace unless it be with the consent of Parliament is against law." Since then, however, Parliament has regularly authorised the maintenance of a standing army. Up to 1907 the military forces of the Crown included the regular army, the militia, and other volunteers, such as the yeomanry. The militia had a distant association with the old English fyrd. In 1907 the army was reorganised into the regular army, with its reserves; and the territorial force, later called the Territorial Army, as the second line of defence. Organisation of the territorial forces is in the hands of county associations established by the Army Council, the War Office being responsible for financing and training the forces. This general pattern of organisation persisted through the subsequent vicissitudes of war and peace, though important changes took place, especially important being the creation of women's forces: the Women's Auxiliary Army Corps in the First World War and the Auxiliary Territorial Service in the Second World War. The A.T.S. was afterwards reorganised, and renamed the Women's Royal Army Corps.

The responsible Minister in Parliament is the Secretary of State for War. Despite his comprehensive title, he deals only with army matters. When the office was set up, largely in

its present form, in 1854, a good many branches of activity connected with the army were not under the War Office—commissariat, ordnance, and medical provision, for example. By 1870, however, every branch of army administration came under the Secretary of State for War. Working with the Secretary is the Army Council, of which the Secretary is the head. The Council was created in 1904, when the office of Commander-in-Chief was abolished. The Army Council, which is an executive body, includes the Secretary of State for War, his junior Minister, a number of high-ranking military officers, and the permanent Civil Service head of the War Office.

The principal military member of the Army Council is the Chief of the Imperial General Staff, who is responsible for war organisation, military training, and manoeuvres. The Adjutant-General is concerned with matters of discipline, health, and allied subjects. The Quartermaster-General deals with food, clothing, and stores. The Master-General of the Ordnance is responsible for guns, ammunition, fortifications, barracks, training-grounds, and the like.

The British Army has never been regarded as the main line of Britain's defence, and there has not been any time in history when the army could claim that superiority over rivals which the navy has often possessed. But the army has been important, and with the expansion of British commitments overseas, the need for a powerful army has steadily increased. Many regiments have served with distinction in Europe, India, and Africa. At the present time the army is an important contributory factor to the maintenance of British interests abroad and to the creation of world order.

### **The Air Force**

The most youthful of the armed forces is the R.A.F. Aircraft were originally used by the Royal Engineers, but in 1912 an air force came into existence and was divided into two sections, the Royal Naval Air Service and the Royal Flying Corps, administered respectively by the Admiralty and the War Office. Various efforts at co-ordination were made by an Air Committee and later an Air Board. But the system

was not entirely satisfactory. In 1918 an Air Council was formed, and its President was given the position of Secretary of State for Air. The naval and military wings of the air force were united under the present title of Royal Air Force. In 1939 the Fleet Air Arm was put under Admiralty control.

The Air Council took over from the Home Office the supervision of civil aviation, but this was ultimately transferred to a new Ministry, the Ministry of Civil Aviation. At the head of the Air Council is the Secretary of State for Air. Other members include a Parliamentary Under Secretary, a Permanent Under-Secretary, and a number of high-ranking officers in the R.A.F. There is a Chief of Air Staff, and other officers concerned with special duties: the Air Member for Personnel deals with recruitment; the Air Member for Supply and Organisation deals with necessary equipment; and the Air Member for Training deals with methods and periods of training for flying staff.

Two of the most important R.A.F. Commands have been Fighter Command and Bomber Command. During the Second World War the high efficiency of fighter pilots contributed largely towards victory in the Battle of Britain, 1940. Later, a large bomber force was created, which played a part in making possible the Allied triumph over Germany in 1945.

## **Recruitment**

Compulsory service in the navy was common up to the eighteenth century, but this applied only to "sea-faring men." During the nineteenth century there were adequate volunteers, largely due to improved conditions in the service. The voluntary principle was, and by many still is, regarded as essential to the highest possible efficiency. The ancient militia was recruited by compulsion for many centuries, all able-bodied men being required to serve. With the lessened danger of invasion, in the nineteenth century, the militia became a volunteer force. The Territorial Force originated as a bulwark of home defence, and a special contingent was created later, with a liability to serve abroad.

The First World War led to the imposition of conscription. A fierce recruiting campaign sufficed until the initial urge of patriotism began to fail. In 1916 compulsory service was introduced and remained until the war was over. With the disarmament following from the conclusion of the war, compulsion was abandoned, not to be revived until 1939. Compulsory national service was instituted some months prior to the outbreak of war, but preparations turned out to be inadequate and the joint Anglo-French armies were forced to give way before the superior equipment of the German forces. Conscription applied throughout the Second World War and was retained after the conclusion.

From 1949, compulsory national service became part of the recognised duty of "male subjects" between the ages of eighteen and twenty-six. The emergency service scheme of the war and post-war period came to an end, and a fixed term of service was instituted. This was settled, after much controversy, at two years. It was, however, open to young men to volunteer for long periods, and make the army, air force, or navy, a career. Women, who had been obliged during the war years to do "essential work" or join one of the Women's Forces (Women's Auxiliary Air Force, Women's Royal Naval Service, or Auxiliary Territorial Service), were freed from all service obligations after the war. Men, on reaching the age of eighteen, unless occupied in some approved civilian work, were required to enter the army, navy, or air force. In 1950 national service men became liable for part-time service after their period of continuous training was ended. In 1957 the decision was taken to reduce the size of the Armed Forces and to end call-up in 1960.

### **Training**

For those who serve in the ranks, training is partly general and partly specialised. Physical training, for example, is a common factor. But owing to the highly complex nature of modern warfare, the forces are highly specialised. Each unit requires specialist training according to the nature of the

duties involved. In many cases recruits to the services learn a trade which they can follow on their return to civil life.

The training of officers has always been a difficult problem. For many years it was traditional in the army and navy to secure officers in peace-time from the upper class of society. But in war-time this limited recruiting field was inadequate, and men in the ranks were encouraged to qualify for commissioned status. In the Second World War commissions in the army were made available, except in the case of certain technicians and professional people, only to those who had already served in the ranks. This "democratisation" continued in post-war years. The navy proved the most difficult service to reorganise on more democratic lines because the difference between commissioned officers and others was more strongly entrenched. In the air force, the "career open to the talents" prevailed as a general principle almost from the start, and the fact that a non-commissioned sergeant might be the pilot and captain of a crew including commissioned officers blurred the distinction between the various grades in the service.

The "democratisation" of the navy announced in 1947 may be regarded as a considerable step in the direction of securing officers from the best available material rather than from a limited class of well-to-do families. From September 1947, officer cadets of the Royal Navy were admitted from any school in the country at the age of sixteen. Evidence is required of attainment to something like General Certificate standard. In addition to this scheme of recruitment, which is paralleled in the other services, there are schemes of entry at the age of eighteen. In 1954 the Britannia Royal Naval College abandoned the scheme of entry at sixteen, and began allowing entrants between seventeen-and-a-half and nineteen only, thus preparing the way for making the college wholly a naval training establishment. Promotions may also be from the lower deck, a position similar to that in the army or air force, where promotion may come at any time from the ranks.

### **Discipline**

Members of the armed forces are, in normal cases, subject to the ordinary law of the land, and, in addition, are subject



to special rules applying to their service. These special rules are applied in service courts and the procedure followed is different from that of the ordinary courts. Soldiers, sailors, and airmen, are required to obey the lawful commands of their superiors, but if any command proves to be unlawful, the man carrying out the command will be liable in the ordinary courts. The difficulty is not, however, serious in practice, stress being laid as a rule on the criminal liability of the superior who gave the order. Although in serious cases, such as murder, the soldier or sailor must appear before the ordinary courts, there are a number of less serious offences for which he can be punished in the service courts. In cases of the latter type, the service man or woman is not usually prosecuted again and given an additional trial in the ordinary courts, but acquittal is not a bar to retrial there.

Differences between procedure by court martial and procedure in the ordinary courts are necessarily considerable, even in peace-time. Summary decisions and punishments when the forces are on active service are unavoidable and must, in the nature of things, involve a number of injustices. But in peace-time a more leisurely procedure is possible and many reforms have been made in trial by court martial. Superficially, the court martial must appear to students of the Manual of Military Law as a highly impartial court with an impeccable procedure. But there are some serious weaknesses. In the first place, the elaborate directions for the convening of courts martial are not easily complied with. The commanding officer instructs the convening officer, who does his best, but it is difficult to ensure strict adherence to rules. Hearsay evidence has frequently been admitted, and there have not always been trained legal experts present to draw attention to the weaknesses of such evidence. In more serious cases the rules are more carefully observed, and first-rate experts help the accused, but the prosecution tends to have the advantage over the defence. In many cases the man in the ranks accused by an officer feels that the scales are somewhat weighted against him, since the judges are themselves commissioned officers.

In 1951, however, a valuable reform put appeals on a more satisfactory footing. The Courts-Martial Appeal Act provides for a court to deal with appeals against convictions, but not against sentences, imposed by any court-martial in any of the Armed Services. Members of the Appeal Court are High Court judges or their equivalents in Scotland and Northern Ireland, and such additional members as the Lord Chancellor sees fit to appoint. Decisions of the Appeal Court are final, unless some issue of exceptional importance arises, when a case may go to the House of Lords. But the right of Service authorities to quash convictions or reduce sentences is reserved. This allows Service authorities to review proceedings of their own courts-martial. It is only after confirmation by the Service authority that appeal to the new court is permissible.

### **Economic Aspects**

During peace-time, the ordinary organisation of army, navy, and air force, combined with a reasonable supply of public money, may enable the machinery of defence to work satisfactorily. The Admiralty, the Air Ministry, and the War Office can purchase what is required from private contractors, and the bulk of purchases have in past years been made that way. War experience has, however, led to the creation of new organisations, some temporary and some permanent.

The Ministry of Blockade, created in the First World War, was a temporary expedient. The need for a Ministry was obvious; after the German announcement that supplies to and from Britain would be seized, it became clear that similar methods might be effective against the enemy. The rules laid down for destroying the enemy's trade involved a close partnership between the civilian and the service departments, and this was effected by the Ministry of Blockade. At the conclusion of the war, the Ministry was abandoned, but it was revived under another name in the Second World War as the Ministry of Economic Warfare. Previous experience led to a speedy application of a blockade in which the navy played a predominant part. When the war ended, the Ministry was wound up.

A more permanent organisation developed out of the need for organising service supplies. The Ministry of Munitions, set up in the First World War, was closed down at its conclusion, but the Ministry of Supply, set up in the Second World War, was continued and expanded after the war was over. The post-war shortage of raw materials of all kinds necessitated allocation between civilian and service needs, though with the immediate emphasis on peace-time production rather than ordnance and service equipment. Ordnance factories were retained under the Ministry's control so that they could turn at quick notice from civilian to service production. Much experimental work was undertaken by the Ministry. But as time went on the need for the Ministry diminished, and its duties were divided among others when it was dissolved in 1959.

### **Co-ordination**

By a process of experiment and elimination during the Second World War, efforts at co-ordination yielded a plan which the Government sponsored in 1946 to secure the best possible organisation of the country's defence. The Prime Minister retains supreme responsibility for defence, and the Cabinet must be consulted on major changes, but the bulk of co-ordinating work goes to the Minister of Defence. He is a leading member of the Defence Committee (under the chairmanship of the Prime Minister), which replaced the Committee of Imperial Defence. The Defence Committee must examine current strategy and make plans for co-ordinating departmental action in preparation for possible war. Meetings of staff chiefs in the Chiefs of Staff Committee were, in 1955, under a Chairman of Chiefs of Staff. The first chairman was a high-ranking officer in the R.A.F. Later a Chief of Defence Staff was appointed to act as chairman. The three service Ministers are responsible to Parliament, as before, for their departments, but work in close relation with the Minister of Defence and the Chief of the Defence Staff.

Operational plans are prepared by joint planning staffs for submission to the Chiefs of Staff Committee, which

submits them, if approved, to the Defence Committee. To co-ordinate production and research, the Ministerial Production Committee and the Committee on Defence Research Policy are available. Although civil defence is not included in the activities of the Ministry of Defence (the Home Office is the responsible department), it is part of the business of co-ordination to forge a link between general defence and home defence. The Home Defence Committee, set up in war years, is retained for this purpose. To ensure proper liaison with the colonies, the Overseas Defence Committee has been revived. Finally, the exchange of liaison officers with the Commonwealth countries is arranged to ensure protection for the Commonwealth as a whole. The rights of the independent members of the Commonwealth to determine their own policy is in no way reduced by this machinery, but voluntary exchange of information is designed to prevent overlapping and facilitate possible future co-operation in action.

### **Rearmament**

The world situation deteriorated considerably in 1950 when the Korean War broke out. Rearmament all over the world pushed up the cost of necessary materials, and the burden of defence preparations was further increased by the need for devoting a higher proportion of the national income than hitherto, to expenditure on the armed forces. In 1951 the Labour Government announced a £4,700,000,000 programme to be spread over three years. This involved the continuation of an austerity policy, the prolongation of rationing and other controls, and some recession from the highest achievements of the Welfare State. After the truce in Korea, Communist advances elsewhere (*e.g.* in French Indo-China) helped to maintain the tension. A new defence policy, aimed at relieving the burden of defence expenditure on the economy, was announced in 1957. In 1961-2 defence expenditure was estimated at over £1,650,000,000—a quarter of Government current expenditure.

## CHAPTER IX

### RIGHTS AND DUTIES

#### **Liberty in the Modern State**

A citizen's liberty consists of being able to do whatever is not forbidden by law, and of being able to do what is possible as a result of law. The specific types of possible action are "rights." They have arisen out of the slow evolution of society from a primitive to a complex economy. In the course of that evolution, individuals and groups have struggled to secure the clear crystallisation of rights. In the related fields of morals and politics, codes have been gradually shaped to meet the demands of society. The law should provide remedies for infringements of rights, and a high standard of social behaviour is needed to guarantee that legal changes work to the advantage of the public-spirited citizen. Rights are constantly changing in character. In some places erosion takes place and there is less liberty; in the other places the opposite process is at work and liberty increases. Custom is a powerful agent, acting upon law, and being in turn influenced by legal decisions. The more complex society becomes, the more rights the citizen needs to acquire. Many of his rights cannot be effective except in a highly specialised community, and, it must be added, in a reasonably prosperous community. The citizen, for example, has a right to the use of public roads, but where these are few or badly paved the right becomes less valuable. Again, a man of property has the right to secure help from the guardians of the law in the enjoyment of his property, but a corrupt police force may weaken the right until it becomes almost worthless.

These examples illustrate an important point about rights. They involve duties on the part of other people. The usefulness of a public highway depends to a large extent on the way in which the duties of the highway authority are carried out. The protection of property involves the duty of the police to

be vigilant and of the courts to be active in punishing law-breakers. A badly organised society is one in which some citizens have most of the rights and other citizens have most of the duties. No society is conceivable in which one section of the community is deprived of all rights and another section is absolved entirely from duties. In theory this position might appear to exist when many slaves minister to the enjoyment of life by a few slave-owners. But there are no large slave societies in the modern world; and even in the slave societies of the past, slave-owners could not avoid the duties of organising their slaves, imposing discipline on them, and arranging for their purchase and sale. There are, however, modern societies in which rights and duties are badly shared, and this may happen even where Governments proclaim their love of "liberty" and "equality".

With some considerable qualifications, it is fair to argue that in Britain rights and duties are reasonably well balanced among the people. Few can escape obligations, few are denied major rights; for this reason society is fairly stable and the rumblings of revolution are not often heard. But the delicate balance of relationships is easily upset. The right to receive a fixed minimum wage may, for example, be seriously damaged by a rise in the prices of commodities. Again, a cut in newsprint may interfere with the right to read a free press. As changes take place in the economic, intellectual, and spiritual life of society, constant readjustment is needed to prevent changes from conferring undue favours on some and undue hardships on others.

### **Personal Freedom**

A fundamental right in any society is the right, under normal circumstances, to enjoyment of life and limb, which, in more detail, implies the power of locomotion and of moving about from place to place without unreasonable hindrance. A corollary is that men and women may not be bought and sold like real or personal estate. The buying and selling of serfs was common during the Middle Ages, but died out towards the end of the period; and slavery had disappeared from England before Tudor times. In the eighteenth

century, it was decided that a slave setting foot in England became free immediately. In 1807 the slave trade was declared illegal wherever the British flag flew, and in 1834 all the slaves in the British colonies were set free. The example of Britain was not immediately followed elsewhere, but a world movement in favour of freedom was aided by Britain's policy. Slavery disappeared in most civilised countries before the nineteenth century ended.

A man cannot, however, be considered free in any very satisfying sense of the term, unless he has safeguards against arbitrary imprisonment. If those who exercise authority in the State can put a citizen in prison for an indefinite period without bringing him to public trial, the citizen is always in danger of oppression more odious and galling than slavery which involves the purchase and sale of human beings. It was for this reason that the famous Dr. Samuel Johnson said that "the habeas corpus is the single advantage which our Government has over other countries." Under Common Law, British citizens have the right to speedy trial. This is reinforced by the Habeas Corpus Acts of 1679 and 1816, by which those charged with criminal and civil offences respectively can enforce their rights. An application on behalf of an accused person can be made to the Lord Chancellor, or any other judge, for a writ or order directing the officer in charge of a prisoner to bring him before the court. Machinery exists to prevent evasion of the writ, and damages can be claimed for illegal detention. In general, no citizen can be imprisoned without "cause shown," *i.e.* without having a definite charge made in public court against him.

But the right to personal freedom is not to be upheld at all times and under all circumstances. In times of war, or serious crisis equivalent to war, the safeguards of habeas corpus may be temporarily set aside in certain cases. The "Suspension of the Habeas Corpus Act" actually involves a suspension of common-law as well as statutory rights to speedy trial, but it never involves wholesale suspension. Powers were granted during the period 1939-45 to enable the Home Secretary to detain without trial dangerous persons where it was "expedient in the interests of public safety or the

defence of the realm." The principle is that the rights of individuals must be related to the safety of the community. As soon as the community is secure, individual liberty is restored. Comparisons have at times been made between the suspension of rights in critical times in Britain and the virtual absence of rights in totalitarian countries. The difference, though admittedly one of degree, is, however, so considerable that there is no real likeness.

### **Freedom of Speech**

A citizen may, as a rule, discuss any matters he wishes, and he will, in normal times, be protected in doing so from any violence offered by opponents. There are, however, limits beyond which statements about others cannot be allowed to go unpunished. A slander is a spoken statement which offends against the law. On the whole, gossip is allowed within very wide limits. The hand of the law does not often descend upon those who say spiteful things about others. A statement which takes the more permanent form of the written or printed word is regarded as more serious than a spoken statement. But no prior permission is required by law to publish anything at all. This is an old-established right, flowing down from the decision made in 1695 not to renew the Licensing Act, under which a form of censorship had prevailed. If it is alleged that a statement is libellous, this must be proved in a court of law. Even in war-time, there is no complete censorship of the Press, though the rules against imparting confidential information are much stricter than in peace-time. As a safeguard, publishers may have their material "vetted" in war-time by a Government department, and this normally, though not necessarily, safeguards author and publisher against any subsequent action.

Words spoken or written may be regarded as illegal either because they are defamatory or because they are seditious, blasphemous, or indecent.

Defamation, *i.e.* an attack upon a person's character or reputation, may be punished by a civil action for damages brought by the aggrieved party. If the defamatory statement is likely to cause a person to "see red," and thereby endanger



the peace, a criminal prosecution is possible. It is not as a rule enough for the author of a statement to prove it true. It is also necessary to show that the statement was to the public advantage. In a civil action, the proof that a statement is true is a defence, but in a criminal action the proof that a statement is true will not necessarily secure a verdict of "Not Guilty."

Sedition, blasphemy, and indecency may lead to criminal prosecution. Seditious libel consists of causing to be hated or brought into contempt Her Majesty and her successors, the Government of the country, the Houses of Parliament, or the judicial system. Any effort to stir people to make any alteration in Church and State except by lawful means, or to raise discontent among the subjects of the Crown may also be regarded as seditious. In practice, however, the law is interpreted so as to give most offenders the benefit of the doubt.

Blasphemous libel is applied to statements which bring ridicule upon, or hold in contempt, the Bible, the Prayer Book, or the tenets of Christianity generally. The fact is, however, that the widest toleration exists. Hyde Park orators and authors with "rationalist" views expound ideas that certainly tend to bring ridicule upon the Bible and Christianity, but it is inconceivable that an action could succeed to-day unless the statements made were offensive in a very high degree. The same principle applies to the law relating to decency, though in this matter the law is not so latitudinarian as in the case of blasphemy though by no means narrow. The law of obscenity is defined in the Obscene Publications Act, 1959, under which Penguin Books Ltd were charged in 1960 when they published D. H. Lawrence's *Lady Chatterley's Lover*. The verdict of the jury was that the publication would not deprave those who were likely to read it.

### **Privileged Speech**

An apparent exception to the rule of equal rights of expression for all citizens is the immunity enjoyed by certain people on particular occasions.

Members of Parliament may say what they wish in either House without fear of proceedings in the ordinary courts of

law. In these special circumstances, they are subject to the rules of the House of Commons or House of Lords as the case may be, and in some ways the rules imposed within the four walls of the House are more stringent than the rules applying to ordinary citizens outside. For example, the use of "unparliamentary" language in everyday life would be allowed to pass without an action being brought in the courts, but a breach of Parliamentary etiquette necessitates at least prompt withdrawal of offending remarks and apology to the person or persons concerned. On the other hand, what is said in Parliament may be reported in full and will normally be looked on as privileged writing. No action can, as a rule, be taken against the authors, printers, or publishers, in respect of accurate reports of speeches made in Parliament. The value of this privilege is that it enables M.P.s to speak fearlessly on matters of public interest, and it is therefore a safeguard of the rights of the citizens whom the M.P.s represent. Abuse is rare, and is checked by the occasional issue of a challenge to a member to say outside Parliament what he has previously said inside. Failure to take up the challenge gives the public reason to cast doubt on the challenged statement.

Judges, when sitting in court, are also privileged persons. They frequently make caustic comments about the man in the dock, and about witnesses on either side, and they can do so without fear of legal proceedings for defamation of character. The same privilege extends to counsel who act on behalf of plaintiffs or defendants, and also to witnesses in court. It is no accident that privilege applies to those who are responsible for framing the law and those who are responsible for adjudicating upon disputes. "Absolute privilege" in these two fields of activity is essential to open discussion of major national issues and to public examination of charges brought by one person against another in the courts of law. "Qualified privilege" applies in such cases as the issue of a testimonial by an employer to another prospective employer. That is, the employer may say what he would not be entitled to say about his employee in the normal course of events. But there is always the danger of stepping over the boundary of employer's privilege, whereas M.P.s and judges are able to say exactly

what they wish in the certain knowledge that they cannot be prosecuted for so doing. But M.P.s must sooner or later seek the support of electors, and they have to bear this in mind. Judges, on the other hand, are virtually independent. The privilege they enjoy is therefore more valuable. Parliament lies in the background as a distant safeguard against serious abuse, but judges may be regarded as the most privileged members of society so far as freedom of expression is concerned.

### **Public Meetings**

A meeting is lawful so long as no illegal action is taken by those who constitute the meeting. No specific authority has to be sought to convene a meeting, just as no specific authority has to be sought to issue any publication. A meeting may become unlawful if a trespass is committed, if traffic is obstructed, if a crime is committed by open force, or if a breach of the peace is caused or threatened.

The question as to what constitutes a threat to the peace has been the subject of a number of judicial decisions. It has been established that a meeting does not become unlawful simply because another group of people attempt to break it up and thereby cause a breach of the peace. When the "Skeleton Army," which was opposed to evangelicalism, attacked the Salvation Army at Weston-super-Mare, disorder occurred, but it was held in the case of *Beatty v. Gillbanks* that the meeting of the Salvation Army was quite lawful. The correct action for the authorities in this case would have been to break up the "Skeleton Army," not to forbid meetings of the Salvation Army. Where the circumstances were somewhat different, in Liverpool, it was held in the case of *Wise v. Dunning* that a meeting of anti-Catholics was an unlawful assembly, though the object of the assembly was lawful. The basis of this decision was that in a Roman Catholic area such as the part of Liverpool where the disturbances occurred, a breach of the peace can hardly be prevented except by prohibiting anti-Catholic demonstrations. Meetings to promote or to oppose particular religious beliefs are normally quite legal, with the exception of such cases as the foregoing.

Meetings, the lawfulness of which is not in doubt, may not normally be prohibited, but an apprehended breach of the peace (as in recent "sit-down" demonstrations by advocates of nuclear disarmament) will on occasion justify prohibition by the police (*Duncan v. Jones*, 1936).

Under the Riot Act, 1715, an order given to an assembly to disperse makes those who fail to comply with the order liable to trial for felony, but an order to disperse does not make an otherwise lawful meeting unlawful. Of modern statutes, the most important is the Public Order Act, 1936, which prohibits the wearing of "political" uniforms and therefore renders illegal any meetings or processions where "political" uniforms are worn. If a chief officer of police suspects public disorder will arise, he may prohibit any procession from going to specified public places. But these and other statutes merely supplement Common Law rules relating to public order. Meetings are, in the main, so free from restriction as to constitute a valuable democratic safeguard. Government policy can be freely criticised and the criticisms reported. In this way the citizen has at hand a constant means of pointing out grievances, rallying support for old and new causes, and providing the Government of the day with intimations of approval or disapproval of policy. Against this, it has been urged that there are inadequate safeguards for those who hold meetings in areas where there is likely to be violent opposition from the audience. Unpopular speakers are, in fact, howled down, and the protection of the police has in many cases been little more than a shield behind which speakers and organisers could make an unmolested departure before rowdiness developed into rioting. This is admittedly a weakness. But in practice it is rare that meetings cannot be held for such reasons, and the proper remedy is perhaps an education in manners rather than an extension of police powers.

### **Association**

The citizen is entitled to join or to promote any kind of association, provided the objects of the association are not illegal. Normally this implies that he may withdraw from an

association whenever he wishes. But the conditions of membership differ widely, and much depends on the agreement, if any, into which the citizen enters when he becomes a member.

Broadly, there are three or four main types of association. At one end of the scale is the purely voluntary body with no fixed entry payment or annual subscription and no rules involving penalties for infringement enforceable in a court of law. Any association whatever must have some object and some rules, however vaguely defined. Many associations, such as local debating societies, are loosely organised so as to attract members who might be repelled by more onerous conditions.

More formal associations carry with them some liability on the part of members, but members are not committed unless they are informed of their liability and signify their willingness to accept obligations. Many academic organisations for the promotion of different studies are organised on the basis of a limited liability for members, who may, however, terminate their liability when terminating their membership.

Associations of a permanent kind for the promotion of profit-making enterprises require to have rules conforming to a pattern specified by law. The promotion of such enterprises is a highly technical business, involving, for those who participate, the privileges of profit-making if the enterprise succeeds, and liabilities if the enterprise fails. Liability may be limited to the amount of capital originally contributed, or it may, in rarer cases, be unlimited except by the capacity of the shareholders to pay.

Parliament can, of course, grant any powers to associations so long as such grants are compatible with the retention by Parliament of legal sovereignty. Residing in the prerogative of the Crown is the right to create certain special forms of association, such as Universities. Such rights of the Crown could only be taken away by Act of Parliament. The ancient right of the Crown to create municipal corporations was last exercised in the seventeenth century, and may therefore be regarded as obsolete. Such creations are now the outcome of Parliamentary action.

Trade unions are special forms of association, considered at one time illegal on the ground that they acted "in restraint of trade." At the present time the status of trade unions is clearly defined by law. They are unincorporated associations, capable of holding funds in the same kind of way as corporate bodies, but without the same liability as corporate bodies for the acts of their members. Numerous Acts of Parliament from 1799 to 1946 have dealt with the rights and duties of trade unions, enabling them to use both political and economic means in attempting to secure their ends.

### **Occupation**

It is the undoubted right of the citizen to exercise a genuine choice in regard to the work he does in the community. In law the choice is very wide, though in practice there are severe limitations on most adolescents or adults who wish to enter upon a career or change from one career to another. Geography is an important factor: most people begin work near home, and they are for that reason limited in their choice of occupation. For the ordinary citizen the geographical limits of the State to which he belongs determine the boundaries within which he seeks work. The United Kingdom, with considerable territories overseas, offers greater scope than is afforded the citizen of a small country. Ability is a second factor of consequence. For many professions, there are stiff conditions of entry which debar many willing people. The setting of professional standards is not in the main a matter for the State, but with the growth of offices held directly under the Crown or under local authorities, the influence of the State has steadily increased. A third factor which affects the worker is the wealth at his disposal. If his parents are willing to help, and have the money to do so, a young person may receive the extra help which is needed to acquire the training essential for many of the higher posts. This factor is still important, but its importance has been much reduced by empowering local authorities to assist able students to utilise any kind of educational facilities suitable to their talents. In this way entry to occupation and continuance

in occupation depend largely on ability and hard work respectively.

To this general principle there are some important exceptions. Compulsory service in the armed forces provided most men temporarily with an occupation for which few had any desire. But, except in war-time, this was only a brief interlude for the many and an opportunity for a permanent career for the few. During war-time, it is usual to endow the Government with considerable powers of direction. In May 1940, Parliament required citizens to place "their services and their property at the disposal of His Majesty." This sweeping provision gave the Government the power to issue orders to any class or individual in the community to undertake any kind of work deemed necessary in the public interest. A considerable direction of civilian labour did in fact result. Older people were not directed, but the young and middle-aged were transferred where needed on conditions approved by the Government.

After the end of the Second World War the economic position necessitated the retention of some forms of regulation. In two principal industries, coal-mining and agriculture, the compulsory principle remained in effect. But, whereas during the war employees were not allowed to change their employer without permission, post-war concessions allowed change of employers so long as men remained in the same occupation. Women were entirely released from obligation to follow particular occupations, and direction of men in civilian life was gradually replaced by a system of incentives.

Economic difficulties led, in 1947, to the grant of powers to direct both men and women into industries of national importance. Very sparing use was made of these powers, and they were revoked in 1950, but the fact that they were asked for long after the war was over points to a significant change in society. Rigid economic planning and unfettered choice of occupation are plainly incompatible. People may as a rule be persuaded to go from one area to another, or from one occupation to another, as the master plan requires. But if the deterrents of lower wages and the incentives of higher

wages are not used to the full, and if at the same time mass unemployment is to be avoided, there is a real prospect in the future of compulsion on a large scale.

### **Property**

The State secures for all residents within its boundaries the enjoyment of lawful acquisitions. But there are a number of important qualifications to this general principle. In the first place, owners of revenue-producing property are liable to income tax unless their total income falls below a relatively small sum. Gains acquired by earning are also subject to taxation. Certain forms of expense are allowed without payment of tax, but it must be shown that such expenses are incurred in addition to normal household expenses and are necessitated by the work of the person to whom expenses are allowed. A second qualification to the right of enjoyment is that it is in many cases very restricted. House property is restricted. Rents for houses rated at less than £40 in London and Scotland, and £30 elsewhere, may not be raised beyond levels determined by law, nor may tenants be evicted if they are of good behaviour, unless the owner is able to show that he will suffer more hardship by being kept out of his house than the tenant will suffer by eviction. Also, local authorities may purchase compulsorily houses for which unduly high rents are being asked. Compulsory purchase is also possible under approved planning schemes. The citizen may not dispose of his property when and how he likes. If it is slum property, for example, there may be expropriation without compensation. The possession of property is in most cases a right, but it involves duties enforceable in the courts of law. Nevertheless, if the right is limited, the protection of enjoyment is reasonably satisfactory. All men must assist in pursuing thieves, and it is one of the special tasks of the police force to see that property does not pass unlawfully from one person to another.

The State is also concerned to see that those who have no property shall receive sufficient sustenance and adequate shelter. It is a cardinal principle of State activity to use some of the resources of the more prosperous members of the



community to help the less fortunate. Until comparatively recent times poverty was considered a disgrace, and blame was normally heaped on the poverty-stricken for the calamity into which they had fallen. The Poor Law (Amendment) Act, 1834, which set up Boards of Guardians, provided the barest minimum of help to the poor. In time a more generous spirit grew up, and local authorities treated the aged poor and orphans in a kindlier way. A large extension of State assistance, which began in 1909, helped to remove the stigma of Government provision. Old-age pensions were at first frowned upon by the middle classes, but the year 1946 saw a general State insurance scheme applying to rich and poor alike. Employer and employee were both brought into the scheme, and the old stigma largely disappeared. The broad principle was limited payments by all for limited benefits to all. But where the limited benefits did not cover basic needs, national assistance was available to meet the deficiency. Self-help is still necessary to secure something over and above basic needs, and for this purpose the State has encouraged Trustee Savings Banks, National Savings Certificates, and other forms of investment for the ordinary man, so that he shall combine ease of saving with security for his money. The view steadily gaining ground is that property affords the citizen a way of self-fulfilment which the property-less man can never enjoy. But if property rights are to be diffused, large possessions are not possible for individuals. High death-duties are defensible on the ground that they assist in the process of diffusion. It is also thought desirable to prevent men from using their wealth as an engine of oppression.

### **Political Freedom**

The essence of political liberty is that men and women shall have an effective voice in changing their government and in making any kind of change, however fundamental, in the way the country is run. This form of liberty is the most important of all, since it is the supreme safeguard for the community. In no country can it be said that the machinery is perfect, but the machinery in the United Kingdom is in fair

working order, old and worn parts are constantly being replaced, and the system of regular lubrication ensures reasonable efficiency.

The machine has five main working parts, acting together so that the motive power of all is the general body of citizens or the electorate. The electors, who are the first working part, elect members of Parliament, and Parliament is the second working part. Dependent on the legislature or Parliament is the Government of the day, which, as the third working part, has the task of shaping the general lines of policy, which must be made acceptable to members. The legislation, for which the Government and Parliament are responsible, is administered by the Civil Service, the fourth working part of the machine, and enforced by the courts of law, which constitute the last principal working part. In this way the "general will" of the electorate is translated into law and applied in thorough-going detail.

In practice, this system does not work as pure democratic theory might demand. Many electors are indifferent to their rights and do not even go to the poll. A still greater number take no interest at all in the choice of candidates, leaving this important task to a relatively small number of party enthusiasts, who are to some considerable extent swayed by skilful press and other propaganda. Again, Parliament has some members who are relatively inactive. A constituency returning a strong, able, and conscientious, man to Parliament is more effectively represented than a constituency sending a comparative drone. Parliament, to which the Government of the day is theoretically responsible, tends to be overawed and overshadowed. Finally, the measure of real independence enjoyed by servants of the Crown has to be taken into account in assessing the way the "general will" is given particular application. Judges, being human, cannot avoid prejudice, nor can civil servants.

But, when all is said, political liberty is a reality. Great legislative advances have followed in the wake of a well-stirred public opinion. Governments do not perpetuate themselves, nor can even strongly entrenched parties acquire a permanent grip on the Government. Judges do, in fact,

apply the law very much as the plain intention of the law-giver indicates, and civil servants are genuinely required to put into force regulations framed under the authority of Parliament. Even where civil servants cannot be proved to have been guilty of unlawful behaviour, they may nevertheless be censured, as in 1954 over the Crichton Down case. In 1950 the Ministry of Agriculture took over some property at Crichton Down which the Air Ministry had purchased before the Second World War. The successors to the original owners in title asked for the land to be re-sold to them. A promise to give "fair consideration" to this request was not fulfilled in spirit, a tenancy under the Ministry of Agriculture being virtually promised before consideration was given to the request. A Committee set up to investigate the affair, reported that there was inefficiency, but not corruption. The principle was laid down that "the citizen has the right to expect . . . that his personal feelings no less than his rights as an individual will be sympathetically and fairly considered" (p. 88).

No system is perfect, and there are weaknesses which cannot be ignored in the political system of Britain, but the strength is more important than the weakness. The trunk of the tree is sound, though a few weak branches are to be found here and there.

## CHAPTER X

### THE JUDICIARY

#### **Civil and Criminal Law**

A crime is an offence against the community as a whole. A civil offence is one which primarily concerns the aggrieved parties, and is unlikely to have serious repercussions in other quarters. This broad and important distinction is fundamental in English law, since it determines the nature of the proceedings, the courts in which cases are tried, and the penalties imposed for wrong-doing. For the most part, the differentiation between criminal and civil offences is real. Treason, the most serious of crimes, plainly endangers the whole community, whereas a dispute about the right to occupy a house is unlikely *per se* to react unfavourably on any except the disputants. But the distinction made between criminal and civil offences tends to be unsatisfactory in many instances. Some cases tried in the criminal courts primarily concern a very narrow circle, while some cases dealt with in civil courts may be quite important from the point of view of the community in general. For example, bigamy is a crime but it is not an offence which threatens the State or is likely to cause a breach of the peace. On the other hand, a dispute relating to compensation or damages may involve many persons. A favourable decision for one claimant may lead to a large number of claims, similarly based; and, provided the claims are fundamentally the same, they must be met. The distinction between civil and criminal offences is one which has arisen through the process of history, and what was once a real threat to community life may no longer be a threat at all, but the categories of a centuries-old distinction are preserved, so that, while there is some validity in the view that crimes concern citizens in general, this is only true with some considerable qualifications.

When it comes to a detailed analysis, crimes are such offences as have been so classified through Parliamentary enactment or decisions of the courts, or both. The three main categories are: treason, felony, and misdemeanour. Treason means an attack upon the Queen or the State; felony includes murder, manslaughter, theft, and forgery; misdemeanours cover bribery, perjury, and rioting, as well as numerous less serious offences. When criminal proceedings are begun, the defendant is as a rule charged on a warrant or a summons. A warrant authorises the arrest of a person and is only used in connection with serious charges. In certain cases, arrest may take place without a warrant. In all cases the person charged must be brought before the magistrates within twenty-four hours. In charges relating to offences less serious in character, a warrant is not issued. The defendant is summoned to appear before a court at a definite time on a definite charge. If he does not come, and sends no excuse, a warrant may be issued for his arrest. Where minor offences are concerned, *e.g.* offences against traffic regulations, the defendant has no right to a jury, but in very serious cases, such as murder, a jury is essential. For offences in the middle category, a defendant may be dealt with in a magistrates' court without a jury if he so wishes. Cases where a jury may be employed are known as "indictable" offences. Although there is a preliminary examination by magistrates, the defendant is committed to Quarter Sessions or Assizes, provided of course that a *prima facie* case exists.

Civil actions are innumerable and incapable of exact classification. They include actions relating to contract, bankruptcy, rent restrictions, employer's liability, matrimonial disputes, libel, and slander. An alleged offence may be the subject of two actions, criminal and civil. For example, a charge of embezzlement which fails after being initiated by an employer, may be followed by a charge of defamation of character by an employee. The magistrates' courts (petty sessions) have very limited powers of trial in civil cases (in addition to their powers in connection with misdemeanours and more serious crimes). Minor disputes between landlord and tenant can be settled, and maintenance or separation

orders can be issued. The main courts of original civil jurisdiction are the County Courts and the High Court. County Courts are mainly concerned with disputes about money and land. They do not deal with libel, slander, breach of promise, or seduction. These issues are for the attention of the High Court, which deals with a bewildering array of subject-matter from divorce to copyright. Decisions in the County Court and the High Court are not final, as the losing side may appeal to the Court of Appeal, and thence, in certain cases, to the House of Lords.

### **The Justice of the Peace**

Justices of the Peace, or, as they are more commonly called, magistrates, are men or women entrusted with a commission under the Crown to maintain the "Queen's peace" and punish minor offenders. They are appointed by the Lord Chancellor on the recommendation of the Lord Lieutenant of the county. Until the latter part of the nineteenth century they were appointed mainly from the gentry. Nowadays they include trade union officials, teachers, business men, and, in a few cases, people from the lowliest walks of life. Local advisory committees, representative of the main political parties, prepare lists of suitable candidates, and an effort is made to secure on the magistrates' bench people of all shades of respectable political opinion. The commission is normally applicable to a definite area for an indefinite period. But chairmen of county, borough, and district, councils are J.P.s only for their period of office as chairman, unless they hold a commission of the peace apart from their being J.P.s by virtue of their local government offices. Privy Councillors may act as J.P.s anywhere in the kingdom, but in the case of normal appointments a man or woman usually resigns on leaving one district, but may be nominated in another district at the discretion of the local committee. J.P.s are advised to resign at the age of seventy or earlier, and must resign at seventy-five unless they formerly held high judicial office.

The special position occupied by J.P.s in our system of judicature is due to the historical development of their office. In 1195 certain knights were chosen to receive oaths for the

preservation of the peace, and "Conservators of the Peace," first appointed in 1285, were given judicial powers in 1327. The name Justice of the Peace was given them in 1360. In 1389 they were authorised to hold Quarter Sessions, and in 1542 Petty Sessions. Under the Tudors and Stuarts very many duties were loaded on to their shoulders, and Chief Justice Coke said: "the whole Christian world hath not the like office, if truly executed." By the Local Government Acts of 1888-94, their administrative powers were very much curtailed, and they are now mainly concerned with judicial work. But some relics of administrative activity persist. For example, the J.P.s are responsible for the issue of licences for the sale of beer, wines, and spirits, and, in the counties, they share with the County Council in the make-up of Standing Joint Committees, which are responsible for the county constabulary.

Frequent meetings of magistrates occur to deal with the rapid accumulation of minor offences in modern society. These "petty sessions" are often known as the police courts because most of the prosecution is done by the police, and much of the evidence is police evidence. A single unpaid magistrate constitutes a court, where only very small fines and very short terms of imprisonment may be imposed. Two or more J.P.s, or one paid J.P., constitute a court with the right to impose heavier penalties in terms of fines and imprisonment. Such a court is empowered to deal with many types of traffic offences, breaches of public order and the like. These offences are of two kinds: those which the J.P.s have to handle whether the accused wishes it or not, and those more serious offences in which consent of the accused is necessary to allow the court to deal "summarily" with the case. Normally, the bench consists of unpaid magistrates who have had no special legal training. No examination has to be passed by the nominees of the Lord Lieutenant, but notes are issued regularly for J.P.s, and there are guides to procedure which J.P.s are recommended to study. To assist them in legal procedure a clerk to the court must be present, and it is necessary that he should be a solicitor. Magistrates' courts are normally open to the general public except in the case of sessions for the

trial of young offenders. These are examined in an informal way by J.P.s specially selected for their interest in the young.

Besides petty sessions, meetings known as Quarter Sessions are held both as original courts of jurisdiction and as appeal courts from petty sessions. It is usual nowadays for Quarter Sessions courts to have a chairman who is legally qualified and salaried. Unpaid J.P.s sit alongside him and are, to a large extent, guided by him in arriving at their verdict.

In petty sessional areas in larger towns, unpaid magistrates are in some instances replaced by stipendiaries—men with legal training. A single stipendiary has the same powers as two or more unpaid magistrates. Some Quarter Sessions are in charge of Recorders, who are paid and have legal qualifications. In Liverpool and Manchester new Crown Courts with Recorders in charge were set up in 1956 to combine the work of Quarter Sessions and Assizes.

### **The Police**

The policeman has an unbroken descent from the unpaid "petty constable" of the thirteenth century who held office annually. The constables detected offences on behalf of the J.P.s, served summonses, and made arrests. But this force was never very satisfactory. As London grew in population, the need for reform became urgent. In the eighteenth century, a corps of regularly paid detectives supplemented the activities of the "watch," and the Bow Street Patrol was also a real success. The next landmark in police history was the creation of the Metropolitan Force by Act of Parliament in 1829. This police force, which resulted from the enterprise of Sir Robert Peel, was placed under the direct authority of the Home Office, and this control is still effective. Though "Peelers" and "Bobbies" were unpopular at first, they soon established themselves as an efficient and friendly force. Under the Municipal Corporations Act, 1835, all boroughs were required to establish a similar force, responsible to the local Watch Committee. In 1839 county areas were permitted to have a police force, and in 1856 they were required to establish one under the control of the J.P.s in Quarter Sessions.



Scotland Yard is the headquarters of the Metropolitan Police Force, and has acquired fame through its Criminal Investigation Department. The C.I.D. is not a national but a metropolitan institution, and can only work outside the Metropolis when asked to do so by Chief Constables in other areas. Special constables have a long history. From early times, constables were appointed by J.P.s for "special" duties such as the preservation of order in times of riot or rebellion. In 1673 statutory authority was given to the practice of making these appointments, which are still a feature of our police system. Special constables have powers similar to those of paid constables. Constables' powers of arrest, which they exercise as "servants of the Crown," are (1) the common law right of arresting on reasonable suspicion those alleged to have broken the "Queen's peace" and those who have been detected committing crime, (2) the statutory right of arresting people caught in the act of committing many less serious offences, and (3) the right of arrest under warrant from a magistrate who is himself a royal servant. After suspected persons have been arrested, they may be questioned. Suitable rules for the guidance of the police were drawn up by the Judges in 1912. These insist that statements made must be voluntary, but such statements may be taken down and used in evidence, not necessarily against the prisoner.

### **The Coroner**

The Coroner's office is a survival from the dim past, and it is an English institution. There is no coroner in Scotland. Until 1926, when the Coroners' Act was passed, the appointment to the office was very variously determined. But reforms made in that year provided that all coroners should be solicitors, barristers, or medical practitioners, of at least five years' standing. Coroners are appointed by County Councils or (in certain cases) Borough Councils. They sit with juries consisting of not less than seven and not more than eleven jurors. Provided that the minority is not more than two, a majority verdict suffices. The function of the coroner is to inquire into causes of sudden death, though a post mortem

does not necessarily involve an inquest. When the deceased has not been seen by a doctor just prior to death, or where the doctor feels an inquiry is desirable, or when a person is found dead in unusual circumstances, a coroner's investigation follows. As soon as a coroner decides on investigation, he fixes a day for the inquest. In some cases exhumation is necessary, and it is the duty of the jury, unless they claim to be excused, to examine the body. Witnesses are called to give evidence as to the circumstances of death and the general state of health of the deceased. Witnesses may be compelled to attend.

Normal verdicts include "death from natural causes" and "suicide while of unsound mind." But when foul play is suspected, the coroner's court will give a verdict to this effect. A verdict of murder or manslaughter may be brought in against a person or persons unknown, or some person or persons may be named. In the last case, it is essential for the coroner to issue a warrant and for the Crown to prosecute, whether the public prosecutor agrees or not. In addition to inquiries made into causes of deaths under suspicious circumstances, it is the duty of a coroner to investigate "treasure trove." All buried treasure is, normally, the property of the Crown, provided that it is of precious metal, *i.e.* gold or silver. There are serious punishments for offenders who attempt to keep or dispose of treasure without reporting it. But when finds are reported it is usual to allocate them to the British Museum if their historical value warrants it. Compensation is then paid to the finder. Alternatively, help may be given to the finder in selling the "trove," or he may simply be allowed to keep it himself.

Coroners have other miscellaneous duties, *e.g.* in London to hold inquests in cases of fire.

### **The Director of Public Prosecutions**

In many countries it is the duty of State-appointed officials to prosecute in criminal cases. But in England the prosecution of offenders is, by well-established tradition, a duty of the ordinary citizen. The practice for centuries in England

was for Justices of the Peace to compel an injured person to undertake a prosecution. In many cases this proved difficult, and penalties had to be applied in case the nominated prosecutor failed to discharge his duty. With the development of the police force, it became usual to put the duty of inaugurating a prosecution on the shoulders of the police. A magistrates' clerk may also undertake the work. But private individuals are still entitled to act as prosecutors ; and it is, in theory, only a matter of convenience that the duty so often falls on the police or clerks of courts. A few prosecutions are, however, initiated by high officers of the Crown.

The oldest-established officers of the Crown are the Attorney-General and the Solicitor-General, both of whom are legal experts and members of the Government. Their appearance as prosecutors is very rare, since they have many other duties associated with their offices. To relieve them, a Director of Public Prosecutions was appointed under statute in 1879. He is, subject to the general oversight and direction of the Attorney-General, to begin criminal proceedings "in cases which appear to be of importance or difficulty." If the refusal or failure of a person to go on with a prosecution appears to make the intervention of the Director necessary to secure the prosecution of an offender, then the Director may step in. The most usual cases in which he is involved are cases of murder, manslaughter, tampering with the coinage, commercial frauds, corruption in elections, obscene literature, theft by Government employees, serious sexual offences, violent assaults, burglary, and peculation by members of local authorities. But the total number of cases is in fact very small.

Under certain circumstances the Director becomes a defending counsel. He must defend the Crown against all appellants to the Court of Criminal Appeal.

The Director of Public Prosecutions is also general adviser to magistrates' clerks, police chiefs, and other persons in positions of responsibility. A vast amount of correspondence is handled in connection with such inquiries, and greater uniformity is introduced into procedure throughout the country as a result of the use made of advice given.

### **The High Court**

The High Court, as it works to-day, is very much affected by the Supreme Court of Judicature Act, 1873, which was amended by an Act of 1875. The central courts of the realm were divided into a High Court of Justice and a Court of Appeal. There were, under this arrangement, five divisions to the High Court: Chancery, Queen's Bench, Common Pleas, Exchequer, and Probate Divorce and Admiralty. A further reduction in number was made in 1881 when Common Pleas and Exchequer were merged into the Court of Queen's Bench. All jurisdiction formerly exercised by the individual courts was transferred to the reorganised courts. Accordingly, they have original civil and criminal jurisdiction, together with appellate jurisdiction from inferior courts.

A Supreme Court of Judicature Act in 1925 consolidated earlier legislation, and the Administration of Justice Act in 1928 provided that all jurisdiction that was the concern of the High Court could be exercised by any division. A case which belongs to the borderline and inadvertently comes before one division need not be withdrawn, and proceedings need not be started all over again in another. For convenience in the transaction of judicial business, however, the three divisions of function which applied before 1928 continue to apply as a general rule.

The Queen's Bench Division, heir to the series of Common Law Courts which evolved in the Middle Ages, deals with slander, libel, and contract. The Assize Courts, which are normally presided over by judges from the Queen's Bench, are essentially sessions of the High Court held away from London. The Lord Chief Justice is president. The Chancery Division of the High Court has fewer judges and is presided over by the Lord Chancellor, whose appointment is a political one and ends with the resignation of the Government. In the late Middle Ages, it was customary to petition the King to reverse judgments regarded as inequitable in consequence of the rigidity of the Common Law, which led to undue hardship in particular instances. The most serious injustice often arose when the Common Law provided penalties for illegal action, but failed to compel the guilty party to redress the

grievance by positive action. Such cases were usually dealt with by the Chancellor, and the specific assignment of these cases to him, in the fourteenth century, was the foundation of the Court of Chancery. Witnesses were compelled by writ of "subpoena" to attend the court. Procedure was revised in 1852 and the court improved. When it was merged into the High Court in 1873, the Act laid down that in cases of conflict the principles of "equity" were to prevail. The third section of the High Court has composite functions, including the successor jurisdiction to the Court of the Lord High Admiral (injuries at sea, etc.), Probate (disputes about wills), and Divorce. Probate and divorce were, until 1857, the province of ecclesiastical courts, but in that year special courts were set up to deal with testamentary and marriage problems. These were merged into the High Court in 1873.

A High Court judge presides over the Restrictive Practices Court set up in 1956. Employers are required to avoid practices put on the black list by the President of the Board of Trade or show the court that they are not against the public interest.

### **The Assizes**

Many judges of the High Court go on circuit. The principal work of judges on circuit is to deal with the serious offences which come before the "Assizes." Since 1875, when a considerable reorganisation took place, there have been eight principal districts or "circuits." The judges go to county or other assize towns, normally three times a year, to deal with criminal and civil offences—mostly criminal. As a rule the judges are members of the Court of Queen's Bench. They are accompanied by barristers, who may act as prosecuting or defending counsel. The Central Criminal Court, popularly known as the Old Bailey, is in effect both Quarter Sessions and Assize Court for London. It was set up in 1834 to deal with offences committed in the City of London, the County of Middlesex, and certain areas of Essex, Kent, and Surrey.

A good deal of ceremony is attached to the holding of Assizes. The High Sheriff, in resplendent robes, welcomes the judge on his arrival. Trumpets sound as the judge steps

in and out of his coach. A solemn service is held at the church, and a dignified entry is made into the court. The elaborate ceremony associated with the work of the scarlet-robed judge in the Assize Court is a reminder of the homage formerly given to the King, since it was from the King's Bench that the personal representatives of His Majesty came around on circuit from late Norman times onwards.

Justice is administered under three commissions:—

(1) *Nisi Prius*, by which civil cases may be decided which have not already been before the High Court.

(2) *Gaol Delivery*, by which all prisoners in gaol at the date of the Assizes are ordered to be tried.

(3) *Oyer and Terminer*, by which offenders are tried who are indicted at the Assize.

For many centuries the work of the Assize Courts has continued unbroken. But radical changes have gradually taken place, though much ancient ceremony persists. The savage punishments commonly given, up to a hundred years ago, has been replaced by a more humanitarian code.

Bail (*i.e.* the release of prisoners on condition that a prescribed sum will be forfeited if they do not appear when required) is granted in many cases after arrest. In view of the serious nature of offences dealt with, imprisonment is often the penalty for persons convicted at Assizes. Trial is by jury, but important changes have taken place. Indictment by grand jury was finally abolished in 1933, though the petty jury remains to determine guilt.

### County Courts

County Courts were created for small-debt recovery. In 1846 the Crown was given the power to set up inferior courts and divided the country for this purpose. Since then, Parliament has extended the functions of the County Courts, *e.g.* the Act of 1856 permitted County Courts to deal with any Common Law actions (civil, not criminal), provided that both sides agreed. Each court is presided over by an itinerant judge, who goes from one to another in his circuit at least

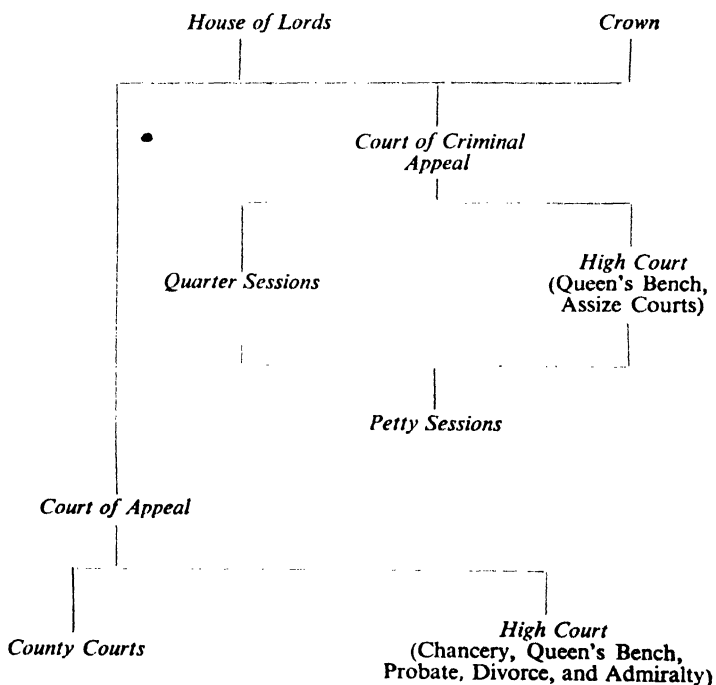
once a month. There are about sixty circuits, within which lie five hundred courts. Two sorts of officials assist the judge: Court Registrars, responsible for clerical work, and Bailiffs, who see that orders are carried out. In view of the pressure of work on County Courts, Registrars deliver verdicts in many cases, where the litigants are agreeable.

One of the main functions of County Courts has been to deal with cases in which the sum involved did not exceed £300, raised in 1955 to £400, and in special cases £500. Other functions are to deal with actions relating to real property of small annual value; bankruptcy (any amount); company winding-up (small companies only); probate (small amounts); equitable actions; and title to property where the property is of relatively low value. If the amount claimed exceeds a nominal sum, there is a right to the services of a jury. By the Appeals Act, 1934, appeals are now direct to the Court of Appeal, and not, as formerly, to the High Court. Important cases may on occasion go further.

### **Appellate Jurisdiction**

Except for the Court of Criminal Appeal, which is exclusively concerned with appeals in criminal cases, and the Court of Appeal, which is exclusively concerned with appeals in civil cases, the courts which hear appeals have also considerable original jurisdiction. Appeals involving difficult questions of law usually go to the Assizes, but there is no absolute line of demarcation between appeals to Assizes and to Quarter Sessions. In London, the Central Criminal Court deals with cases which would elsewhere be dealt with at Quarter Sessions and the Assizes. Appeal from Petty Sessions is therefore direct to the Central Criminal Court (the Old Bailey). By the Criminal Appeal Act of 1907, which came into force in 1908, every person convicted on indictment at Quarter Sessions or Assizes may appeal to the Court of Criminal Appeal, which took the place of the Court for Crown Cases Reserved. Before 1908, appeal was allowed only on a point of law, and only then with the consent of the presiding judges or Justices of the Peace. Appeal under

the Act of 1907 may be on a point of law, against the sentence, or, by consent of the presiding judge or appeal court, on a question of fact. The Court of Criminal Appeal will set aside the conviction if there has been a miscarriage of justice, but a reversal of judgment will not be given on a technicality. On appeal, a sentence may be increased or diminished or cancelled altogether. The judges are the Lord Chief Justice

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and specially appointed members of the Queen's Bench. Appeal must be heard by an uneven number of judges. Where a point of law of general public importance is involved, a further appeal to the House of Lords may be allowed. In most cases, however, the decision of the Court of Criminal Appeal is final. But the prerogative of mercy may still be



exercised by the Home Secretary, in the name of the Crown, to revoke a death sentence.

Appeals from County Courts go, under an Act of 1934, direct to the Court of Appeal. To it also come appeals from the High Court. The president of the Court of Appeal is the Master of the Rolls. He is assisted by eight judges and the presidents of the three divisions into which the High Court is divided. As a rule, only three judges sit, and an appeal is on a question of law only. There are no witnesses and no jury. Questions of fact are not considered, the evidence of the court of first instance being taken as read. Beyond the Court of Appeal is the House of Lords. Any peer may be present, but in practice only law lords attend. By an Act passed in 1876, three of the following law lords must be present: the Lord Chancellor, the Lords of Appeal in Ordinary, and members of the House who hold or have held high judicial office. Appeal to the Lords is possible for all litigants, but in the case of actions originating in the County Court, leave must be obtained. The House as a Court also appears to have power to call up a panel of High Court judges. In cases of grave public importance the procedure takes the form of proposition versus counter-proposition. Late in the nineteenth century two carpenters were dismissed for doing some work on a ship that came within the province of an engineering union. The engineers refused work unless the carpenters were dismissed. In the Lords the procedure opened with a proposition of the Lord Chancellor that a man had a natural right to do any work he pleased. This was opposed and defeated by the counter-argument in favour of the natural right of a man to choose those with whom he shall work.

### **The Ecclesiastical Courts**

The ecclesiastical courts are integrated with the country's judicial machinery. At one time, everyone in the country was subject to law administered in the ecclesiastical courts, but the most important sections of this universal jurisdiction vanished in the nineteenth century when probate and marriage disputes were finally transferred to secular courts.

The position now is that for all important purposes the clergy alone are subject to the ecclesiastical courts, and the parallel is close between their authority and the authority of courts maintaining naval and military discipline. The principal ecclesiastical court is the Bishop's Consistory Court, presided over by the Bishop's Chancellor, who must be a barrister of at least seven years' standing. Jurisdiction is both civil and criminal. Laymen are nowadays affected only through such punishments as being refused admission to the Church and its sacraments. At one time excommunicated laymen could not serve on juries, but this disability was removed in the reign of George III.

The civil jurisdiction of the Consistory Court includes disputes about repair of Church property and about mortuary fees. Appeals go to the Provincial Court of Canterbury, known as the Court of Arches, or to the Provincial Court of York, known as the Chancery Court of York. Bishops can be tried in the Provincial Courts. Cases of heresy can also be dealt with. The supreme appellate court is the Judicial Committee of the Privy Council, whose jurisdiction was defined in 1833. Strictly speaking, the procedure is by petition to the Crown, and the Committee merely tenders advice. But in practice the advice given is always taken, the Queen acting only as the nominal head of the ecclesiastical as of the lay courts.

### **Bail, Costs, and Probation**

When any person is charged with a serious offence, he must be kept under supervision until admitted to bail. Bail is security given either by the accused, and/or some other person, that he will appear in court when required. Bail is not allowed when treason or murder is the charge, and the justices have discretionary powers in refusing bail in other cases. The law in regard to bail is complicated, and experienced magistrates have often suffered the condemnation of judges for allowing bail to persons who have subsequently committed further offences before being brought to trial. In 1947, Lord Chief Justice Goddard criticised the Cambridge magistrates for allowing bail to two men after police objections had been

made. "Time and again," said Chief Justice Goddard, "the courts find that men with records are charged with offences which are felonies and for some reason they are admitted to bail, although they do not show the smallest defence, and very often, as in these cases, admit the offence." Such castigation may seem to be deserved when outrages have been committed by accused persons while on bail. But the number of such cases is small, and there is a measure of common sense in the view that to hold a man for weeks, between his preliminary examination and his appearance at the Assizes, makes a real inroad into the principle of speedy trial.

Under an Act of 1908 the courts have the power to order the payment of costs, either for the prosecution or the defence, out of local funds. A prisoner may also be ordered to pay the costs of prosecution as well as of defence. Accused persons on trial at Petty or Quarter Sessions are entitled to engage a lawyer to conduct their defence, and poor prisoners may, under the Poor Persons Defence Act, 1930, obtain free legal aid. It is usual for a lawyer on the poor persons' panel to be present in court, and to be called on if needed to conduct the defence of accused persons. After the Second World War, the definition of a "poor person" was in serious need of revision, owing to the substantial rise in the cost of living, and new regulations were called for to make possible the proper defence of persons charged with criminal offences. In civil cases, costs continued to make litigation unwise if in any way avoidable.

Probation dates back to the Probation of Offenders Act, 1887. In 1907 an Act was passed which enabled a court to discharge an offender instead of sentencing him. He might, instead, be put during a specified period under the supervision of a probation officer and be compelled to accept regulations conducive to his well-being. Subject to a satisfactory report by the probation officer, he would, at the end of the period, be given his full freedom as a citizen. In 1925 the Criminal Justice Act extended and regularised the probation system. Each petty sessional area became a probation area, with one or more probation officers (often a man and a woman). The expense of the system falls on the central authority through

the Home Office, which is also responsible for Home Office Schools set up from 1908 onwards to supplement the probation system. Detention centres and "Borstal" institutions are for young offenders who need special care in a formative period of their lives. A very high percentage of those attending such schools never appear in the courts again. This educational system, in conjunction with probation, has done much to check the development of criminal tendencies.

### **The Judges**

The head of the judicial system is the Lord Chancellor, who is assisted by nine Lords of Appeal and other peers who have held or are holding high judicial office. Apart from the Lord Chancellor, all judges hold non-political appointments. The Lord Chancellor holds office only while the Government with which he is associated retains power. Other appointments are made on the Lord Chancellor's advice, but the Crown has no power of dismissal thereafter. The position of the judges was determined by the Act of Settlement, 1701, which laid down that judges might be dismissed only on an address to the King by both Houses of Parliament. This took away from the King a powerful weapon of control, and when the King's power became nominal it remained as a check on the power of the Cabinet, which was the legatee of royal authority. Parliament may have intended to wield the weapon of address to control the judicial bench, but in practice the judges were left independent. As a result of their extensive knowledge of the law, their high remuneration, and their security of tenure, the judges have been, in recent centuries, entirely free from the corrupting influences which affected judges in the U.S.A. during the nineteenth century. Judges in Britain are further safeguarded because their remarks are privileged. No libel action can be taken against a judge, whatever remarks he may offer in the course of executing his duties.

The principles of British justice tend to be upheld because of the integrity of the judges. Other factors contribute, such as the tradition of fairness established among Justices of the Peace, the high standard of evidence given by the police force,

and the vigilance of the press in reporting cases and revealing grievances. But the king-pin of the system remains the judge, whose influence, even when the official verdict rests with the jury, is often paramount in the important decisions of the courts. A principle of justice which has become firmly established in conjunction with the integrity of the judges is that accused persons are considered innocent until proved guilty, though some tendency in the opposite direction has been discernible in recent times. The presumption of innocence is important, though taken for granted, in England. It is difficult to imagine an English judge allowing the public prosecutor to treat accused persons as guilty in the way Vishinsky used to do in trials of alleged traitors in the U.S.S.R. Another principle of British justice is speedy trial in open court. One of the objections of judges to decisions made by Departments of State in their relations with the ordinary citizen is that such decisions are taken behind closed doors. The whole judicial bench is opposed to the extension of quasi-judicial powers to Government Departments. In the jealousy with which the judges guard the access of the citizen to the ordinary courts of the land is to be found a real bulwark of liberty.

### **The Jury System**

Minor criminal cases are tried before magistrates without a jury. But in more serious cases, after a *prima facie* case has been established, a written accusation, known as a "Bill of Indictment" is drawn up. Up to 1933, this Bill was placed before a grand jury whose business it was to consider if there was sufficient evidence to warrant an accused person being tried. For many years this procedure was hardly more than a hollow formality, and its disappearance caused little heart-ache. Trial takes place before an Assize Judge, or the Justices or the Recorder at Quarter Sessions, assisted by a jury. In England the jury consists of twelve persons, who must be agreed on the verdict they return. If a unanimous verdict is not returned, the judge may discharge the jury and form a new one. To ensure the swift discharge of justice, many more jurors are summoned to court than are likely to

sit in judgment, but they are required to stay until the end of proceedings involving the use of a jury. In addition to the rights of the judge in regard to the dismissal of juries, there are rights of accused persons. They may object to particular jurymen and have them replaced ; or, if they can give adequate reason, may object to the whole jury and have a completely new one. Objections raised must of course precede the trial. If a man on trial has reason to believe that jurors may be prejudiced through acquaintance with persons involved in the trial, his objection is sound. Yet it was the virtue of the medieval jurymen that he was acquainted beforehand with the facts of the case. Only by slow degrees did the new conception of the jury become established. Jurors in England give a verdict of "Guilty" or "Not Guilty." In Scotland a verdict of "Not Proven" is permissible, a verdict which suggests doubt, but is in fact similar to "Not Guilty"; and a verdict of "Not Guilty" means that no retrial is possible. Any British citizen between the ages of twenty-one and sixty, and having the requisite owner or occupier qualification, is liable to serve on a jury. Names of persons qualified to act as jurors must appear on the electoral rolls. There are a considerable number of persons exempt from jury service: aliens, felons, the physically incapacitated, M.P.s, clergymen and Nonconformist ministers, members of the legal profession, doctors, chemists, members of the armed forces, and some members of the Civil Service. Women as well as men serve on juries, and no excuse for non-attendance at court will suffice unless the grounds of ill-health, and proper substantiation, are given. Payment is made for expenses and loss of earnings.

Qualifications and conditions for jurors in criminal cases are the same as for jurors in civil cases. The verdict is normally unanimous, but a majority verdict may be accepted if both parties to the case are agreeable. "Special" juries were formerly used at the "special" request of either party to a civil action, or as ordinary procedure where complex issues were involved. The jurors in such cases were persons, men or women or both, with a relatively high property qualification (*e.g.* occupation of premises with annual rateable value not

less than £100). A notable case where a special jury was used occurred in 1947 when Harold Laski, a leading member of the Labour party, brought an action against the editor and publishers of the *Newark Advertiser*. The jury decided against Laski. On this occasion the jury consisted of five women and two men. Shortly after the Laski case, the Juries Act, 1949, abolished special juries, except for certain commercial cases in the Queen's Bench. Jurymen in coroners' juries vary in number from seven to eleven, and jurors are selected from resident householders in the neighbourhood. A majority verdict is acceptable, if the minority does not exceed two.

Juries have been regarded as an anomaly in the modern system of justice. In a complex society, experts are needed to deal with difficult problems of litigation. But jurors possess no expert qualifications. They are not required to know the law; they are apt to be swayed by prejudice; some are inclined to follow the lead given by a vigorous personality; and few are able to resist the weighty and impressive directions given by a judge. Moreover, jurors do not as a rule desire the work thrust upon them. Only the fear of a heavy penalty impels them to do their duty. They resent being away from work, and they regard as wasted the time that has to be spent waiting for their case to begin. Against this, it is arguable that the variety of experience upon which a chance collection of jurymen have to draw is a valuable background to decisions involving ordinary people. The very lack of legal knowledge and the strangeness of the surroundings mean that the jury are unlikely to act in a routine way. Their conventions of behaviour are likely to be a rough cross-section of the code prevailing in the world outside the courts. The judge deals with legal matters; he can say what the law is and what it is not. Juries are therefore fully advised on technical matters. Their main task is to say whether a defendant did or did not carry out the activity which is laid at his door. From general circumstances they have a shrewd idea whether an accused man is guilty or not; and if they are assured he is guilty but deserves sympathetic treatment, they can make a recommendation for mercy.

### **The Legal Profession**

Expert aid in legal matters is provided by the two main branches of the legal profession: barristers and solicitors. A barrister is "called to the Bar" by one or other of the four ancient societies of Lincoln's Inn, the Inner Temple, Middle Temple, or Gray's Inn. These societies were founded in the Middle Ages and their business is managed by senior barristers known as "Benchers." Students are required to join an Inn for a minimum of six terms before taking the final examination. They must put in a further six terms before the call to the Bar, and not until then do they become barristers able to appear professionally in any court. This means that a student is required to attend for at least three years at one of the "Inns" before practising as a barrister. Usually, students pay a considerable fee to study in the "chambers" of a practising barrister. After ten years as a Junior Counsel, a barrister may apply to the Lord Chancellor to "take silk", *i.e.* become a Queen's Counsel. After its conferment, a man has the right to wear a black silk gown instead of the more ordinary black gown which he wears as a Junior Counsel. Judges are normally appointed from the ranks of Q.C.s; and other high offices are also open to leading barristers—such as the offices of Attorney-General and Solicitor-General. All work coming to a practising barrister must come through a solicitor, and there are strict rules against "advertising" or in any other way "influencing" possible clients. The barrister has to wait for work to come along, and, when he has secured his "brief," it is necessary to make a good showing so that further "briefs" may soon be forthcoming. Barristers may not form partnerships, but young barristers often get a chance by acting as "devils," *i.e.* doing work of smaller consequence which has been passed on by agreement with the solicitor who approached the experienced barrister in the first place.

Agents for those who engage in litigation are solicitors. To enter the profession, the student must enter into "articles of clerkship" with a practising solicitor. The consent of the Law Society is required before entry into articles. The usual period of articles is five years, but it may be reduced for those



who have already passed examinations of a preliminary kind. Solicitors are entitled to appear in Petty Sessional and County Courts, but even here barristers are sometimes employed, especially if there is a likelihood that a case will go on appeal to a higher court. Only barristers may appear in the High Court and Courts of Appeal, and there are obvious disadvantages in changing counsel for a client when a case is transferred to an appeal court. The Law Society, which conducts examinations for solicitors, continues to exercise a good deal of authority after a solicitor has begun work. In 1942 a fund was created under the aegis of the Law Society to provide compensation for people defrauded by solicitors, and the Society is empowered by law to investigate solicitors' accounts when charges are made of financial malversation.

### **The Challenge of Administrative Tribunals**

With the extension of Government activities in new fields, the need has arisen for the speedy settlement of disputes where local authorities and departments of state are involved. It would plainly be absurd if every order issued under statutory authority could be challenged in Courts of Law. Administration would be held up interminably, the cost of defending suits would place intolerable burdens on the taxpayer, and the prestige of those in authority would fall. Hence the allocation of quasi-judicial powers to Ministers and others. For instance, under the Acquisition of Land (Authorisation Procedure) Act, 1946, the validity of a compulsory purchase order could not be questioned in any legal proceedings.

In 1958, following the report of a Committee under the chairmanship of Sir Oliver Franks, an Act of Parliament authorised the setting up of an advisory Council to examine the constitution and procedure of tribunals and the procedure at statutory inquiries (see p. 18).

## CHAPTER XI

### THE ORGANISATION OF LOCAL GOVERNMENT

#### **The System**

By local government is meant the organisation and work of locally elected bodies, designed to do local work delegated to them by Parliament. Much local activity lies outside this definition: judicial functions, for instance. Again, central Departments of State have set up regional organisations, but the officials are appointed by the Departments and are not local government officers. Locally elected bodies have law-making powers, but only within the comparatively narrow limits laid down by statutes. Councils are liable to find their by-laws null and void if, when tested in the courts, they are found to have exceeded the powers specifically authorised by Parliament. Moreover, financial assistance from the centre is conditional on carrying out duties in line with Government policy; and there is a regular system of inspection to see that local government is efficient. Local authorities act, therefore, in close liaison with the centre, and for certain functions are no more than agents.

For the purpose of local government, England and Wales are divided into areas, each of which is administered by elected councils. In some areas there is only one local government authority affecting the citizen's life. But in other places he may be affected by two authorities, and in rural areas he is affected by three.

Administrative counties cover most of the country, and only places of high population are excluded. Each county area has its County Council, a system which was created by the Local Government Act of 1888. Sixty-two counties were then created, coinciding in the main with the historical counties, but providing for separate administration in the three ridings of Yorkshire and the three divisions of Lincolnshire. Suffolk and Sussex were divided into two; and a few areas with

special local traditions also became administrative counties, such as Ely, and the Soke of Peterborough. Under the Local Government Act of 1894, the administrative counties were also divided into urban and rural districts, each with sanitary functions, but subordinate in many aspects to the County Council for their area. The larger units of population subordinate to county authorities were non-county boroughs, which have, in many cases, a long and honourable history. They have at one time or another received a charter of incorporation from the Crown, but in recent times they have become increasingly dependent on their county authority. There are parish divisions in each county district, but parish authorities are important local government units only in rural areas.

The county boroughs were set up by the Local Government Act of 1888, and their councils were given much the same powers as a County Council. Nineteen county towns and a number of other centres with a population exceeding 50,000 were withdrawn from the administrative control of the County Councils and were called "counties of cities" or "counties of towns." The word "county" was meant to show that the authorities set up with this title were not subordinate to any other type of local authority, but were independent except in so far as they were under the control of the central government. In 1888 and 1945, the population levels for new county boroughs were raised to 75,000 and 100,000 respectively, but in 1949 the 100,000 limit was dropped, only to be revived in 1958, but not as a hard and fast rule. All boroughs have a uniform system of organisation, though they vary in function. The Municipal Corporations Act, 1835, provided for a general ratepayers' franchise and did away with the corrupt municipal system which prevailed earlier on. Further reforms were effected in 1882, and a borough is now defined as any place subject "for the time being to the Municipal Corporation Act of 1882." In 1938 there were 372 boroughs, including 83 with county status. The one major exception in local government is London, which has a County Council but no rural districts. There are twenty-eight boroughs under the wing of the L.C.C. The ancient City of London, although it has important social functions,

has similar local government status to the metropolitan boroughs. The position was defined in 1899 by an Act applying to London alone, and the organisation has, in essentials, persisted, although in 1961 the Government outlined a radical reorganisation, scheduled to take effect in 1965.

### **The Parish**

Parishes originated in the Middle Ages as ecclesiastical divisions. With the decline of the manor, the parish came to be used as a unit of local government, particularly for the relief of the poor. In 1894 parishes in urban areas retained their ecclesiastical functions only, but parish organisation in rural areas was reformed. Present-day local government of the parish is based on the Local Government Act, 1894.

Parish affairs are administered by a Parish Meeting alone or by a Parish Meeting and a Parish Council, according to the number of the inhabitants. Every rural parish has a Parish Meeting. This assembly should be summoned twice a year, once in March and again by arrangement at some convenient time for the electors. Further meetings may be called by the chairman of the meeting, or any six local government electors, or the representatives of the parish on the Rural District Council. Where no Parish Council exists, the Parish Meeting acts as a council, decisions being by show of hands. Meetings are held in the evening to allow for the attendance of the working population of the village. Where there are less than 200 inhabitants in the parish, there can be a Parish Council only by the consent of the Parish Meeting and of the County Council. If the population is between 200 and 300, the decision whether to have a Parish Council rests with the meeting. If the population is above 300, there must be a Parish Council. County Councils have powers to amalgamate small parishes for the purpose of creating a Parish Council to administer the affairs of the group.

Where a Parish Council exists, the duties of the Parish Meeting are for the most part taken over by the council. The number of councillors, which may vary from five to fifteen, is fixed by the County Council, and an election takes place once every three years at a parish meeting held in May.

Voting, until 1948, was by show of hands, unless a ballot was requested by five electors or one third of those present at the Parish Meeting, whichever number is the less, but the Representation of the People Act, 1948, provided for secret ballot in all cases. The chairman, who need not be an elected councillor, is chosen by the council at a meeting which must be held following the May election. There must be three meetings a year, but more meetings may be held if two councillors or the chairman so decide.

A Parish Council may elect a treasurer and must appoint a clerk, but a Parish Meeting cannot appoint a paid officer without the consent of the County Council. The scope of Parish Council and Parish Meeting activities is wide in theory, but often small in practice. Adoptive Acts permit parish authorities to provide public baths, cemeteries, and libraries, but in most cases there is either no strong demand for the facilities or provision by other bodies is considered adequate. Progressive councils concern themselves with recreational facilities for their inhabitants, allotments, and care of footpaths other than those at the sides of roads. Also, they may receive and administer property given for the benefit of the parish.

Where there is a Parish Council, the Parish Meeting may veto the raising of loans, or the spending of money above the produce of a fourpenny rate. If no Parish Council exists, a Parish Meeting may spend up to an eightpenny rate, including expenditure under adoptive Acts.

### **Urban and Rural Districts**

Urban and rural districts have councils consisting of councillors and a chairman. The councillors are elected in May each year and, as a rule, one third retire annually. The number of councillors is determined by the size of the area and is specified by the Ministry of Housing and Local Government. In small urban districts, councillors are elected by the whole district, but in large areas there are divisions. The Rural District Council represents the parishes, each parish of 300 inhabitants sending at least one member. Under the Local Government Elections Act, 1956, the district councillors may, from 1960 onwards, be elected together once every

three years, instead of one third annually. The chairman of a District Council, who may or may not be chosen from the elected body of councillors, is *ex officio* a Justice of the Peace for the county in which he resides.

Urban District Councils deal with tasks which are, in rural areas, divided between the parish and district authorities. Thus Urban Councils are concerned with allotments and housing, whereas Rural District Councils deal with housing, and Parish Councils with allotments. The main task of District Councils is, however, sanitation and auxiliary work. Notification of infectious diseases, drainage, sewage collection and disposal, smoke abatement, and housing, are all matters which District Councils handle. An Urban District Council may also acquire, by application to the Ministry of Housing and Local Government, all powers not already within its orbit that belong to Parish Councils, *e.g.* those relating to the administration of charities.

Rate levying is a function of Urban and Rural District Councils, and other authorities must "precept" on these councils for a proportion of their income.

### **The Borough**

A Borough Corporation includes the mayor, aldermen, and burgesses, a burgess being a person whose name appears as a local government elector. As a rule, it is impossible for the burgesses to meet and make decisions, though votes are occasionally taken on specific issues such as the opening of cinemas on Sunday. Normally, however, the business of the borough is transacted by an elected council. Non-county and county boroughs differ in function but not in constitution.

For purposes of representation the borough, like the urban district, may be divided into wards, each returning as a rule three councillors. The number of councillors is determined by the charter of the borough, but the number can be adjusted by Order in Council to suit population changes. Councillors were, until 1947, elected on November 1st in each year, holding office for three years. In 1948, however, no elections were held, they were postponed until May 1949. This brought the election into the first half of the year as in District

and County Council elections. Where wards have three councillors, continuity is normally provided for in ward policy by arranging that two out of three councillors continue in office in any one year, while the third resigns. But the whole body of town councillors can resign at one time if so desired, and a clean sweep is therefore a possibility.

Aldermen are elected by the councillors to serve for six years, one half retiring every three years. When a councillor is elected as an alderman, a by-election is held and a new councillor comes in. The office of alderman is mostly an indication of honourable esteem. The number is a third of the total number of councillors, and their main function, in addition to their work on the council, is to act as returning officers for a particular ward, *i.e.* to supervise vote counting and declare the result of the ballot.

The mayor of the borough is chosen by councillors and aldermen, and is elected for one year, either from councillors or from persons qualified to be councillors. It is a position of dignity and importance, and entails considerable expense to the occupant of the office. Accordingly, the mayor is usually given a yearly grant to meet at least part of his out-of-pocket expenses. The duties of the mayor are to act as official head of the municipality. As "first citizen," he provides hospitality on behalf of the corporation. The mayor is automatically chairman of all council meetings which he attends. During his period of office, the mayor holds a commission as a Justice of the Peace, but he then ceases to sit on the magisterial bench unless he is a J.P. by appointment on the recommendation of the Lord Chancellor. Apart from this, the mayor has no special authority. He cannot appoint or remove officials, nor has he any power of veto. The position is one of social status rather than political authority. In large cities, the mayor has the dignified title of Lord Mayor, but his privileges are the same. If the mayor is absent from the borough for more than two months, except as a result of illness, he must vacate his office. The same penalty applies to other members of the council who are absent for more than six months, unless the reason for absence is acceptable to the local authority.

### **County Boroughs**

The County Borough Council is often described as a one-tier authority, *i.e.* it is competent to deal with all local government business.

In connection with public health, the County Borough Council is the sanitary authority for the area. Sewers must be constructed and maintained, and sewage works must be provided for the disposal of refuse from drainage systems. Streets must be regularly cleansed, house-to-house collection from dustbins must be made regularly, and it is necessary to see that rivers, canals, and wells are not polluted. Under the Public Health Act, 1936, a supply of pure water must be provided for domestic purposes either by setting up waterworks, co-operating with other authorities in doing so, or allowing private enterprise to make provision of pure water. Public Health Inspectors must be appointed to inspect anything which causes offensive smells or other annoyance. The keeping of dangerous animals or the permitting of nuisances from trades such as paper-mills or fish shops are the concern of the council and the appropriate officers. Means must be taken for the prevention and control of infectious diseases, and children must be vaccinated unless exemption is secured by parents on conscientious grounds. Inspectors must be appointed to safeguard the population against unwholesome food. Milk can be inspected to see that it comes up to the standards set by the Government in cleanliness, fat content, and absence of extraneous water. Health visitors are appointed to visit sick mothers, and clinics are provided by the authority for expectant mothers and for mothers with young children. The mentally unfit are also within the province of the authority. Most important function of all is housing, including both the condemnation of houses unfit for habitation and the building of houses for working-class people.

County Borough Councils are education authorities for their areas, and they are responsible, as are other authorities, for public library facilities. The authority must also maintain an efficient police force. Under the Local Government Act, 1929, County Borough Councils have minor duties in



connection with poor-relief, though the bulk of these duties disappeared as a result of legislation passed since the Second World War. The maintenance of classified and unclassified roads in the area is a responsibility of the council, which also deals, in conjunction with the Ministry of Transport, with road traffic regulations. The establishment of one-way streets, and the provision of public parking places and pedestrian crossings are all part of the council's work.

To carry out its duties, the council must appoint suitable officials, such as the Town Clerk, the Treasurer, the Medical Officer, the Surveyor, the Education Officer, and the Chief Constable. The expenses of local government are met in part from rates which are collected direct by the authority. Most of the rest of the money expended is collected from a central authority in accordance with a prescribed formula and subject to efficiency in the carrying out of local government business.

### **The County**

The County Council is the principal authority in the two-tier system of local government. Below it are the non-county boroughs, and the urban and rural district councils.

County representation is based on the division of the county area into electoral districts, each returning one councillor. All councillors are elected together once every three years. All of them retire together. Elections are held some time in April. If a councillor dies or resigns, a by-election is held to fill the vacancy for the remaining period of the three years, unless a fresh election in the county is due within six months. The number of councillors is dependent on the size of the county and is regulated by the Ministry of Housing and Local Government. County aldermen number one third of the total councillors and are elected by councillors for six years, one half retiring every three years. It is usual for councillors to select aldermen from among their own number, though they are not obliged to do so, and in some cases they are inclined to create as aldermen men who belong to the majority party but have failed to secure election as councillors. Both men and women are eligible for the honour, and people are selected, as a rule, who have already done considerable

service on the council. The presiding officer at meetings is a chairman, not a mayor as in the case of boroughs. The chairman is selected from councillors or from persons qualified to be councillors. A chairman is *ex officio* a Justice of the Peace. Meetings are held at least four times a year, but, owing to transport difficulties in the country, it is unusual to have more than the statutory minimum of meetings, when the principal business is the review of work done by committees.

The powers of a County Council are, in the main, similar to those of a County Borough Council, but sanitary work, for example, is the function of other councils in the area, whether rural, urban, or non-county borough. All residuary local government activity in the area, *i.e.* powers not specifically allotted to lesser authorities, is the province of the County Council, and the tendency of modern legislation is to extend the scope of county control at the expense of the smaller authorities. A County Council may take over the work of a subordinate authority if gross negligence is proved. Inquiries may be held into the working of local government, and County Councils have power to alter the boundaries of administrative units within their area. Delegation of authority is possible in certain circumstances. For instance, the Shops Act of 1912, dealing with conditions of employment and closing hours, empowered County Councils to take steps to enforce the Act, but allowed for the delegation of these powers to district councils. Not much use has, however, been made of delegated powers in the downward direction. On the other hand, the power of district councils under the Town and Country Planning Act of 1932 to delegate upwards was considerably used, and proved a stepping-stone to the later transfer of planning powers by statute from district to county councils. An interesting relic of the past is seen in the control of police in county areas. Power is here lodged in a Standing Joint Committee representing the County Council and the local Justices of the Peace.

### **The Government of London**

The government of London differs from the government of other areas mainly for historical reasons. Over many

centuries, London has been the political capital of the country, and in more recent times it has been the focus of the country's industry, trade, and finance. London has surpassed all other English cities in size and importance for such a long time that its institutions have come to be regarded as specially sacrosanct. At the same time, its rapid extension into neighbouring counties and the changing character of its economic and social life have led to a demand for new solutions to local government problems. London is therefore an extraordinary mixture of the old and the new. Ancient institutions, colourful and interesting, survive alongside one of the most modern and progressive forms of local government in the world.

During the nineteenth century the sprawling of London outwards in every direction brought a variety of trusts and boards into existence. The City of London organisation was limited to a very small area, as it still is, and the rural organisation of vestries and justices was inadequate to cope with the problems of the new urban settlements. By the middle of the nineteenth century there was a confused jumble of organising bodies, without any co-ordinating body to straighten out difficulties. By the Metropolis Management Act of 1855 the various *ad hoc* bodies were abolished, small parishes were amalgamated under district boards, and the administrative machinery of the larger parishes was overhauled. The Metropolitan Board of Works was set up to provide for a uniform system in the newer London area. The Board was elected by the City Corporation, the vestries of the larger parishes, and the district boards. In 1888 an administrative county of London was created out of the "Metropolis," and a judicial "county," corresponding in area except for the City, was carved out of the London areas of Middlesex, Kent, Surrey, and Essex. The City continued as a judicial county, but was merged into the administrative county.

The business of local government in the administrative county, which includes only about three and a quarter million of the population of Greater London, is divided between the London County Council, the City Corporation, and twenty-eight metropolitan borough councils which were set up under the London Government Act of 1899. The City Corporation

has unique functions and a unique organisation. A good deal of sanitary and general health work comes within its orbit ; it is a housing authority ; and it was a planning authority until the Town and Country Planning Act, 1947, transferred powers in this connection to the L.C.C. The government of the city is in the hands of a Lord Mayor, Aldermen, and Councillors. There are three assemblies. The Court of Common Hall consists of the "liverymen," who are members of the great City companies. They nominate two aldermen for the office of Lord Mayor. The Court of Aldermen elect the Lord Mayor, who is the chief magistrate during his period of office and the dispenser of hospitality for the City. He lives at the Mansion House and receives a considerable salary, which is, however, inadequate to meet his expenses. The main local government business is done by the Court of Common Council, which consists of councillors and aldermen. The City Corporation maintains its own police force, but neither the L.C.C. nor the metropolitan boroughs are police authorities (the Metropolitan Police coming under the Home Secretary).

The metropolitan borough councils consist of mayor, aldermen, and councillors, in much the same way as ordinary non-county boroughs. The aldermen are, however, only as one to six in proportion to the councillors. Councillors are elected for three years and retire in groups of one third of the whole number, unless the council, with permission of the Ministry of Housing and Local Government, declares in favour of simultaneous retirement. The borough councils are rather more restricted in scope than ordinary non-county boroughs. They must appoint a finance committee, as in the case of a county council, and accounts are subject to audit by the Ministry of Housing and Local Government. They have no power over the Metropolitan Police Force and are not education authorities. They are, however, housing and sanitary authorities.

The London County Council has a chairman, aldermen, and councillors, in the same way as any county council. It is the planning authority for the whole area, and is an authority, as are the borough councils, for housing. Flood prevention, sewage disposal, upkeep of museums, road construction,

and education are all within the range of L.C.C. activity. With its large membership and numerous committees, it is almost a parliament in itself. Since 1903 all Bills "promoted by the London County Council containing power to raise money for the creation of stock, or on loan" have been introduced as Public Bills. The L.C.C., apart from the duties for which it is directly responsible, is closely associated with many other bodies concerned with the well-being of London's inhabitants.

The Metropolitan Water Board, for instance, is indirectly elected by the London County Council, the City Corporation, the Metropolitan Borough Councils, and other authorities, for whom the Board supplies piped water. The management of the River Thames, from Sheppey to Teddington, is in the hands of the Port of London Authority, a composite body including representatives of watermen as well as nominees of the Admiralty, Ministry of Transport, Trinity House, the City Corporation, and the London County Council. Above Teddington, the Thames Conservancy is the responsible body. Like the Port of London Authority, it represents government departments and local authorities within its area.

Outside the area of the L.C.C. live more than half the people of "Greater London." In these outlying parts, the ordinary organisation of local government applies. In 1960 the Royal Commission on Local Government in London issued its report. This recommended a Council for Greater London covering a much greater area than the existing L.C.C. Fifty-two boroughs were to be established within the new area, with more powers than those exercised by the existing twenty-eight London boroughs. The Commission recommended that the City's government should remain as already established. At the end of 1961 the Government announced its acceptance of the Commission's main proposals, although with larger and fewer London boroughs.

### **Local Government Associations**

The tangle of local government organisation which remains, despite constant reshuffling of boundaries, makes it difficult to legislate on social matters without causing a good deal of resentment in some local quarters. The practice has

developed by which the central authority, before embarking on proposals to lay before Parliament, consults local authorities on problems of the day to secure a measure of prior agreement. The Local Government Boundary Commission, set up in 1945, interviewed representatives of every county council and every county borough council. They also discussed problems with representatives of 324 county district councils. Not till then was a report issued. But such a laborious effort cannot be accomplished except where radical reorganisation is contemplated. It is to bring regularly to the notice of the central authority the general viewpoint of different types of authority that associations of the various local authorities have been formed. There are in existence a County Councils Association, an Association of Municipal Corporations, an Association of U.D.C.s, an Association of R.D.C.s, and a Metropolitan Boroughs Standing Joint Committee. The latest comer to the fold is the Parish Councils Association, which developed out of the Parish Councils Advisory Service of the National Council of Social Service. These associations have central offices in London, employ an expert staff, issue year books, and prepare memoranda on specific topics. They are consulted by Government Departments and have an important influence on new legislation. The associations are voluntary and the expense of joining them relatively small.

The associations suffer, however, from a considerable drawback. The variety of organisations represented in any association is so complex that a really united front on important issues is difficult to secure. County councils tend to be agreed on resisting the extension of county borough status, because this deprives county councils of funds and work, diminishing their status and importance. But large counties have comparatively little interest in the question whether small county areas should be merged into larger units. On the other hand, the smaller units view the loss of their identity with alarm and are inclined to overlook the disadvantages of operating small and sparsely-populated areas. In all associations the same tendencies are visible. Parish councils with long purses welcomed the creation of a Parish Councils Association, but the smaller parish authorities were disinclined

to enter an association which involved considerable expense. As a result, a good many parishes were unrepresented when the Association was formed. The other associations adequately represent the local authorities for whose interest they stand, but the Parish Councils Association had to be launched in the face of considerable opposition.

### **Reform Proposals**

The Local Government Boundary Commission, set up under the Local Government Act, 1945, which issued its report in 1947, made some important proposals suggesting a "new deal" for local government. These proposals were based on the principal anomalies which the Commissioners saw in the system under investigation. The smaller counties and county boroughs were, in their view, incapable of working efficiently, with the result that new solutions to social problems were tending to by-pass local government machinery. The local government machinery had failed to keep in line with changing population trends in different parts of the country. "Piecemeal decisions" and "bargaining" had produced chaos in the relations between central and local authorities. Boundary conflicts between counties and county boroughs have been frequent since 1888. Accordingly, the Commissioners argued in favour of the need for one-tier (county borough) and two-tier (county and district) systems. The non-county borough, urban district, and rural district should all occupy the same sort of position in relation to the county council, but with the possibility of "delegating" functions from the county whenever it was appropriate to do so. The Commissioners admitted that delegation had not been much used or approved in the past, but thought "delegation" a useful instrument nevertheless. To make the tier system really effective, counties too small to work economically should be amalgamated. The most drastic changes suggested were in East Anglia, where it was proposed to amalgamate Cambridgeshire, Huntingdonshire, the Isle of Ely, and the Soke of Peterborough.

The major proposal of the Boundary Commission was the creation of a new type of authority, whose area would form

part of the county in which it lay. This new authority should be intermediate between the "all-purpose" authority of the one-tier system and the "minor-purpose" authority of the two-tier system. "We confess that in recommending this solution, we have also been influenced by a keen desire to find a course which lies between the extreme views of the counties and county boroughs, but which is not a mere temporary patch-work, leaving the real problems outstanding for our successors." Under the new proposals there would be three types of local government unit: counties, county boroughs, and county districts. New county boroughs ("most purpose" authorities) would be middle-sized towns, roughly 60,000 to 200,000. Finally, the non-county boroughs should have their position reviewed, some becoming "new" county boroughs and others taking their places with urban and rural districts as county districts.

These reforms were duly considered by the Government and by local authorities. But they involved so much radical reorganisation that it was decided in 1949 not to proceed to such drastic changes at the time. Accordingly, the Local Boundary Commission was dissolved by Act of Parliament. In 1958 a new Local Government Act was passed and two new Boundary Commissions were set up (one for England and one for Wales). There have been some radical proposals, including a plan to reorganise Cambridgeshire and neighbouring counties somewhat along the lines previously suggested. All these proposals have been, however, within the framework of the established sixfold division of counties, county boroughs, non-county boroughs, urban districts, rural districts, and parishes.

In 1960 came the much more ambitious Greater London plan (see p. 186).



## CHAPTER XII

### LOCAL GOVERNMENT IN ACTION

#### **Electors and Elections**

Local governing bodies come into existence at the behest of the electors. Democratic procedure had its first major triumph in municipal government when, in 1835, the franchise went to all male ratepayers. The establishment of county and district authorities in 1888 and 1894 respectively was also on a ratepayer basis. In the twentieth century the need for equating the Parliamentary and local government franchise led to a virtual merger of qualifications so that, with a few minor exceptions, the persons who may vote for Parliamentary candidates may also vote for local government candidates. To get on the electoral list, a person must be a British subject of full age, *i.e.* twenty-one, who has a residence qualification, or a British subject of full age who has occupied land or premises worth at least £10 a year, for the necessary qualifying period. In county and non-county boroughs, an elector may be registered in one ward of the borough only, and he can, of course, register only one vote. But in counties, districts, parishes, and metropolitan boroughs, although an elector may use only one vote at a general election of councillors, he can be registered in any wards or divisions for which he has the necessary qualifications. At the time of the election he may then choose in which ward or division he will vote. But, in any by-election for another area, an elector who has voted elsewhere on a business or occupancy qualification may, nevertheless, vote in the new ward or division so long as his name is on the electoral roll.

Before an election is due, the "returning officer" gives notice of the election day. A general election of councillors must be held in the spring in accordance with rules laid down by Parliament. The system of November elections for borough councils was abolished in 1948. Candidates for the position

of councillor must have similar qualifications to voters, and it is a disqualification to be of unsound mind, serving a sentence of more than three months, or be a person convicted of corrupt practices at elections within five years of the election. The first step of a would-be candidate is to become nominated. Nomination-papers can be secured from the returning officer, and it is necessary to get a proposer and seconder, who sign the paper. For counties, county boroughs, non-county boroughs, and urban districts, it is necessary to secure the names of eight more supporters, who sign the nomination-form. Elsewhere, a proposer and seconder are enough. The nomination-paper must be delivered by a specified time, and the candidate must, as a separate item, give his written consent, properly witnessed, to stand as a candidate. Withdrawal of candidature is possible up to a week before the election is due. If the number of valid nominations does not exceed the number of members to be elected, the candidates are returned unopposed. If the number of nomination-papers is greater than the number of places to be filled, an election is held. The procedure is by secret ballot, as in a Parliamentary election. The election is conducted at the public expense, but candidates usually incur some expenses in promoting their candidature. Permitted expenses depend on the number of electors in the area. Accounts have to be kept, and there is a post-election scrutiny. The permitted expense for any candidate is £25, with an additional allowance where the electors exceed five hundred in number. With some exceptions, the provision for voting by post or proxy is like that in Parliamentary elections.

Corrupt and illegal practices may lead to the nullification of a poll and the holding of a new election. It is unlawful to exceed the prescribed limit of expenses, or to hire cars to take supporters to the polling-booths. It is also unlawful to entertain supporters by hiring bands, or to give away money to secure votes. Free drinks or food are also forbidden. So are threats and violence when used to intimidate voters. On polling day, voters cast their votes by putting a cross against the name of the candidate or candidates they support. Police protection is provided for the ballot-boxes as they are sent to

a central counting-house. The returning officer supervises the counting, and the agents of the candidates are permitted to be present to see that the procedure is fair. When the count is over and the elections completed, the elected candidates must formally signify their acceptance of office. Unless this is done, the seat becomes vacant and a fresh election has to be held. There are no penalties for those who fail to secure election. There is no cash deposit, as in Parliamentary elections, and there is no forfeit.

### **Council Meetings and Councillors**

Local authorities are required by law to hold an annual meeting and at least three other meetings. The annual meeting must be held shortly after the general election. The first piece of business is to elect the chairman or mayor. Then comes the election of aldermen, if any vacancies have occurred by this time. The committees are also appointed, as a rule, at the annual meeting. The chairman or mayor is elected by councillors, but outgoing aldermen are not entitled to vote unless, of course, they have been elected as councillors in the election just previously held. The outgoing chairman or mayor presides until the new one is elected. When voting is equal, the person presiding at the meeting has a casting-vote. After election, the chairman or mayor is required to declare his readiness to take up office.

Aldermen are elected by councillors, no alderman being allowed to take part in the election. Election is by means of vacancy. A by-election is necessary to fill the vacancy created by the election of a councillor to the office of alderman, since no alderman may hold office as a councillor. For all normal purposes, however, an alderman has the same position as a councillor. He sits at the same meetings, has the rights of proposal and debate, and the same voting powers.

Procedure to elect parish councillors and the chairman of a parish council is entirely different from the procedure in regard to other authorities, and has been dealt with in the previous chapter. Within the framework of Act of Parliament or Royal Charter or both, a council may deal with any business appropriate to its area at any of its regular meetings.

Certain duties must be carried out and others are permissive. Whatever decisions are made by the council will be carried out by its officers, but where damage is done to others as a result of carrying out the council's mandate, the citizen may have the possibility of redress through the ordinary courts of law.

Councillors are entitled to continue their work on the council so long as they do not endeavour to use their position to promote their own interests and so long as they are in other respects well-behaved citizens. A business man may not occupy the position of councillor in the L.C.C. if he has any interest in any contract (*e.g.* for building houses) with the authority. A member of a local authority cannot hold a paid office under that authority, and a former member of an authority cannot hold such an office under it until a year has passed since he ceased to be a member. There are, however, some exceptions to the rules about payment. Parliament agreed in 1948 to payment for councillors to cover their loss of earnings while they attended meetings of the council, but such remuneration is not a disqualification. Nor is a mayor disqualified by accepting a salary. Bankrupt persons and those who have made assignments are normally prevented from being members of a local authority for a period of five years after their discharge. Imprisonment without the option of a fine is a disqualification also for a period of five years after the event. Failure to attend meetings for a period of six consecutive months is a bar to continued membership on a council, unless the member's explanation is satisfactory to the council, or he is serving in H.M. Forces.

### **Committees**

In a small area it would be possible for a local council to do the whole business of the authority. But few areas for which a local council is responsible are small enough for that. In most places the complexity of affairs is such that a great deal of use is made of committees. By law, councils are entitled, and many of them are obliged, to appoint committees for particular kinds of business. These smaller bodies, with a more limited field to cover, examine evidence, deal with proposals, and make recommendations. It is usually the

business of the full council to accept, amend, or refuse, the proposals emanating from the committees. An important difference between local and Parliamentary committees is that whereas in Parliament business is usually dealt with first by the whole House and then passed on to committees for further consideration, in local government the initiation of policy frequently proceeds from the committees, which are in many instances capable of taking action themselves, though the whole council is always competent to review their work as a whole.

The advantages of the committee system are manifold. Members of the council who have particular interests and special knowledge are able to concentrate on particular aspects of council activity. An ex-schoolmaster often finds his niche in an education committee. Again, committees enable business to be carried through more expeditiously. Councillors are normally people with little spare time for council work, whereas M.P.s are paid £1,750 a year for full-time service for the community. A man may well have time to serve on one committee, but be quite unable to spare time to serve on many committees. A few people with adequate leisure may become members of several committees, but there is always the danger that a "Jack of all trades and master of none" may be merely a "passenger."

Statutory committees are those which an authority is compelled to have. All authorities with education functions must have an Education Committee. Borough councils which have a separate police force have a Watch Committee, a name recalling the days before Sir Robert Peel, when watchmen were the principal pillars of law and order. County councils must appoint a Finance Committee, and so on. Almost all councils appoint some committees which it is optional for them to have. The regular committees so appointed are "standing committees." Those appointed for particular pieces of work rather than for a continuous policy are "special committees." Many committees are themselves so large and overburdened with work that they appoint sub-committees. An Education Committee, for example, may have an Adult Education Sub-Committee.

The personnel of committees is in some degree subject to legal provision. Some committees, such as those dealing with finance, are wholly composed of councillors. Others, like education committees, may have a minority of members who are not councillors. Such persons co-opted from outside would be people on whose special knowledge the committee would wish to draw. In some instances it is illegal to appoint a committee composed wholly of men, *e.g.* a Maternity and Child Welfare Committee. Again, a County Agricultural Committee must include agricultural experts. Convention as well as law affects the composition of committees. The proportion of members of the majority party in the council tends to be reflected in the composition of committees, though by no means exactly; and when a member resigns from a committee it is usual to appoint someone from the same party to succeed him.

The procedure of committees is largely determined by the council as a whole; but some committees, such as the Watch Committee of a borough council, are very nearly independent. In the case of Watch Committees, their decisions are irrevocable by the council as a whole, though membership of the committee depends on voting in the whole council. In most other cases and matters, the council is supreme. Frequency of meeting, method of voting, limitation of expenditure, quorum, duties of officers, and other matters, are defined by the council's Standing Orders, which are for the most part alterable at will by the council. But there are some points determined by statute, such as the keeping of minutes, and here the council has no discretionary power. As a rule, meetings of the council as a whole are open to the public, but committee meetings are *in camera*, and are less formal. It is, however, here that the main decisions are hammered out, and the council tends to become more and more a registration office for committee decisions.

### **Powers and Functions**

The powers and duties of local authorities are defined by Acts of Parliament. Also, to a small extent, they are affected, in the case of boroughs, by the charters of incorporation

which the boroughs hold. The powers and duties of local authorities are various. In some cases the authority has the duty of carrying out directly a specific piece of work. Until 1948 it was a well-established duty of authorities to administer public assistance. Destitute persons were not to appeal in vain for help. Accordingly, Poor Law institutions were built to accommodate the poverty-stricken who had no means of support. Authorities were required to provide them, where necessary, with clothes, shelter, and food. In 1929 this duty passed from Boards of Guardians to county and borough authorities, and, in 1948, to the central authority, which, however, continued to use local authorities as agents.

Under a series of Education Acts, culminating in 1944, Parliament placed squarely on the shoulders of county councils and county borough councils the duty of seeing that adequate provision was made for all types of education. The authorities were to make provision where it was not already available or satisfactory, but they were not obliged to make all the provision themselves. In various places they did in fact take different views of their obligations. Some were inclined to make the maximum direct provision; others were in favour of encouraging voluntary provision where this was considered useful. Local authorities may also be under obligation to enforce legislation where they themselves provide neither buildings nor institutions, *e.g.* in the enforcement of closing-hours for shops. Finally, there are many powers which authorities can use or not at their own discretion.

A brief analysis of local government functions reveals a wide variety of work. Of fundamental importance is the provision made for public health. Sanitary services are provided in most areas; a supply of piped water is available nearly everywhere, including many remote rural areas; and sanitary inspectors are employed to prevent health nuisances. Food, drugs, and child welfare, are all local authority concerns. But hospital and general medical treatment is the province of the Ministry of Health, under legislation which came into effect in 1948. Housing and town planning are of first-rate importance, both being linked with problems of health and general well-being. Compulsory education depends

on local authority provision and the enforcement of attendance by children at school. Highways and bridges are the care of the local authority, except for trunk roads, but even here an authority may undertake work as the agent of the Ministry of Transport. Police are a local concern, with the exception of the Metropolitan Police, who are entirely under the control of the Home Secretary, though the borough authorities are obliged to contribute their quota to the expense of maintaining the force. Among other functions are the provision of parks and libraries, the licensing of entertainments, and the upkeep of a fire-brigade service. This last was a national provision from 1941 until the end of the Second World War, but ultimately reverted to the local authorities. A vast amount of registration work falls to local authorities, including the registration of motor vehicles, of electors, and of births, deaths, and marriages.

### **Acquisition of New Powers**

Councils have a variety of functions to perform, according to their status. Thus an "all-purpose" authority, like a county borough council, ranges over the whole field of local government activity. But, within a county set-up, parish councils deal with minor matters such as the care of footpaths not abutting on highways; rural district councils deal with housing and sanitation; urban district councils deal also with housing and sanitation but have other duties including those connected with highways; non-county boroughs have a still wider range of functions—sometimes including the control of police; and county councils deal with any local government functions not carried out in their area by the district and parish authorities. There is also a population factor. Urban districts vary in power according to population, and so do non-county boroughs. In addition to this complex division of powers, there is a considerable difference as between one authority and another with the same status and similar population figures. It is, in fact, possible to acquire and discard powers by a number of different methods.

Statute is the basis of local government powers. It is possible, by statute, to make any desired additions, so long as



Parliament approves, to the standard range of powers allotted to any particular authority. The procedure is by Private Act of Parliament. In essence the result is the same as if a Public Bill were passed, but the procedure in Parliament resembles a judicial process. The bigger counties and many of the county boroughs, like Birmingham, promote Private Bills to obtain powers in excess of existing statutory provision. Birmingham acquired in this way the right to organise a municipal bank. The licensing of theatres for public entertainment is a normal function of a local authority, but the right to erect and maintain a municipal theatre requires special legislation. Hundreds of Acts of Parliament have been passed to enable authorities to deal with matters otherwise not within their scope. Unfortunately the procedure is lengthy and expensive. Smaller authorities cannot afford the luxury of a Private Act very often. This method of acquiring additional power is therefore almost confined to authorities with high incomes where the cost of a Private Bill appears as a comparatively minor item in the total expenditure.

There are a number of adoptive Acts, which authorities can use at their discretion. The main object is to allow opportunity to various authorities to embark on enterprises which might not be desirable for all areas having a similar kind of local government organisation. The Public Libraries Acts are good examples. The Baths and Wash-houses Acts are also adoptive. Adventurous authorities can experiment, or a real need can be catered for where no facilities exist by other provision. Certain kinds of transport systems have been run by local authorities under adoptive Acts, but the scope of such legislation is limited, especially because of nationalisation. For the most part the provision of social amenities is either desirable or undesirable. But there are, obviously, cases where "adoption" is a reasonable policy. To meet this need permissive clauses have often come to be inserted in Acts which also contain compulsory clauses.

Under certain circumstances, powers may be transferred. Thus, in a rural district which covers only one large parish, the powers of a parish council are exercised by the rural district council, in addition to the statutory powers conferred

on the rural district. An authority which fails to carry out its duties properly may be suspended, in which case a higher-ranking authority will do the work. Sometimes the Ministry of Housing and Local Government confers urban district powers on rural district councils. Delegation of powers is possible in many fields. A county council may delegate its powers to a district council, when the district council becomes an agent. On occasion, Ministries delegate powers to authorities who then act outside their normal scope, as agents of the Ministry. Joint Boards and joint committees are often set up to deal with functions which are better dealt with over a wider area than is covered by a particular authority. This has happened in the case of county authorities responsible for mental health. Finally, Parliament may take away powers exercised under any sort of statute passed formerly; on the other hand, new work may be given for a local authority to do. The scope of local authority business is always changing, being eaten away by one force or another at certain points, but increasing at others, like the coast of eastern England.

## **Officials**

All local authorities may appoint officials. In the case of the parish council two officers may be appointed, a clerk and a treasurer, but only the clerk may be paid. One man may be clerk to a considerable number of parish councils. In the case of the borough, the clerk is called the Town Clerk. In all other authorities, he is the Clerk of the Council. Urban and rural district councils must appoint not only a clerk but also a medical officer, a sanitary inspector, a surveyor, and a treasurer. All borough councils are required to make similar appointments to those made in urban and rural districts. Whenever authorities have certain kinds of duties to carry out, an appropriate officer must be appointed. A public analyst is needed for food and drugs ; shops inspectors, for enforcing hours of closing and conditions of employment ; registration officers for births, deaths, and marriages, and also for elections. Where appointments are compulsory, the officers may be paid, but many offices are only part-time occupations, and in some cases honorary officers carry out work.

For higher appointments, particular qualifications are needed, and salary scales may be determined by the central authority, but for the most part local authorities are not seriously hampered in the choice of candidates or the payment of salaries. Normally, appointments are held at the discretion of the appointing body, and, in any case, a serious complaint against an officer would not go unheeded in Whitehall. But employment, whether of "officers" or "servants," is normally secure in tenure, except for temporary posts which are filled to meet special needs.

Fusion of appointments was at one time a common practice. But this is gradually going out of favour. Small authorities cannot provide full-time employment, but in the case of large authorities, the principle "one man, one job" must normally apply if work is to be done efficiently. The clerk of a county council is usually clerk of the county Quarter Sessions, but this is an exceptional fusion of offices in a large authority. Even where a full-time appointment is made, abuses are, however, possible. The Birmingham City Treasurer neglected his official duties during the 1930's and 1940's while he was engaged on a large volume of private work, and was only brought to justice through the discovery that he had systematically evaded payment of income-tax for many years. As a general rule, however, the behaviour of officials is impeccable. Conditions of office are good, and the penalty for inefficiency is dismissal, with consequent loss of pension rights, though employee contributions are returnable unless there has been serious misconduct, when the contributions may go to the employee's dependants. For many years, a great variety of conditions of service existed in the country. Much uniformity has been introduced in recent years. The Superannuation Act of 1937 allows for "transfer value" in respect of pensions from one authority to another. The National and Local Government Officers Association has secured more uniform treatment than existed before its rise to influence. Regional Whitley Councils representing staff and employing bodies have also done much to achieve national standards of pay and conditions.

The legal liability of local government officers is similar to that of other employees. Most councils allow a good deal of discretion to their principal officers, both in making appointments and in spending money. But the officer must take care not to act outside the limits set by the authority, nor must he act on the orders of the council in contravention of the law. It is not possible to escape liability for illegal payments by putting forward the claim that the council issued the instruction. Officers must disclose to the council any interest they may have in any account made by the authority or proposed for its consideration. Also, no officer may accept any payment for work done in his official capacity, other than the salary he has from the authority, but this does not preclude him from earning additional sums in his spare time.

The point has sometimes been made that a local government officer has the disadvantage of being responsible to a council, whereas a civil servant is not liable to be dismissed by Parliament. In fact, this is little more than a debating-point. The dismissal of officers is a rare thing, and local government service is, in most ways, as attractive as the Civil Service. The one apparent disadvantage seems to lie in the tendency to increase the field of central government activity at the expense of local authorities, but even this is more apparent than real, since, in a transfer of power, officers tend to be transferred *en bloc*.

## **Rates**

The principal source of local revenue is the rates. Something, of course, comes in from the rents of council houses, and from a variety of authority undertakings, but the cost of "services" in local government falls mainly on rates and on central government payments. Rates had their justification, years ago, in that householders received benefits from local government services, roughly in accordance with their payments. A man with considerable property plainly derived more value from highways than did the man of no property. Gradually, however, this idea came to lose force. Agricultural land was derated in the 1920's during a depression, but in times of agricultural prosperity the rates were not levied

again. Industrial property was allowed to escape with only one quarter of the normal rates, and the position was only belatedly changed after prosperity returned to manufacturers. Moreover, the social services provided have, in recent times, gone towards relieving the lot of the poor. The householder no longer receives benefits in accordance with the amount of rates he pays.

Rating authorities are district councils and borough councils. Other authorities, like county councils, prepare their estimates, and rating authorities are required to collect rates to meet the "precepts" of other spending bodies. A rural district council may spend only a trifle of the rates collected in the area—the rest going to the treasury of the county council. Many non-county boroughs are in the position of collecting two or three times as much as they spend on their own work.

Each "hereditament," or property which is separately rated, is given an "annual" value by the rating authority. This used to be reckoned as the rent which a tenant might be expected to pay. But, owing to the tendency to keep assessments low, the theory was not altogether in keeping with the facts, before the Second World War. Subsequently, the theory ceased to bear any close relation to actual rental value, and the "annual" value came to be little more than a fiscal expression. The position was made more complicated when the Rating and Valuation Act, 1925, made permanent the relief from rates already applying temporarily to agricultural land. Agricultural buildings were also relieved of seventy-five per cent of the rate burden; and many kinds of industrial plant and machinery were derated. The Rating and Valuation Act, 1961, provided for the ending of industrial derating in 1963. Rates are collected from "occupiers," but lodgers do not come within this category. An "occupier" is a person with a responsible prospect of permanent residence, normally a rent-payer or owner-occupier. Every rating authority had formerly an assessment committee, and to ensure uniformity in assessment, there were County Valuation Committees and Central Valuation Committees. But, under the Local Government Act, 1948, assessment became a function of the

Inland Revenue authorities, which made new assessments for 1956 as a preliminary to a fully realistic assessment later. The amount of a rate is expressed as a precise sum in each £1 of rateable value.

### **Government Grants**

For over a hundred years Parliament has authorised the use of national income for local purposes. The subsidising of local authorities goes back to 1835, when grants were made to meet the cost of transporting overseas prisoners convicted at quarter sessions and assizes. Soon afterwards, when the establishment of local police forces became compulsory, grants were on a percentage basis, *i.e.* the Government contributed a fixed proportion of the total expenditure. From 1888 onwards the policy of "assigning" revenue was favoured, and local authorities were allowed to keep a proportion of what national taxation was collected locally. For a time the surtaxes on beer and spirits came within the province of assigned revenues. But the rapid expansion of local government activity would have meant handing over many more sources of revenue than the central government thought desirable, and had the drawback from the point of view of State Departments that local authorities might in this way become virtually independent except for the rather shadowy control of Parliament. To-day only a small sum goes to local treasuries from the assigned revenues on gun licences, game licences, and dog licences. Percentage grants were used to a considerable degree until 1959, when a general grant was introduced; they are still paid in respect of police and roads. The percentage grants are normally around fifty per cent of total expenditure. The figure is stable for police costs, but road grants are complicated, the percentage depending on the type of work done.

The major drawback of percentage grants is that they do not clearly distinguish between the needs of an area and the capacity of the area to foot the bill. In 1929 the Local Government Act provided that some percentage grants should be abolished, though many were retained. But a new type of subsidy was created—the General Exchequer Grant, commonly known as the "block" grant. The Government first

estimated how much money should be put into the fund. This included the sums lost through derating, the sums lost through percentage grant abolition, and new money for new needs. The whole sum was then divided among the counties and county boroughs in accordance with a formula linking road mileage, total population, and number of children under school age, with total rateable value. In 1959 education, the grant for which was the most important of those on a percentage basis, was included in the block grant group of services, which include child welfare and fire services.

An additional method of providing for the needs of authorities took effect in 1948. From that time "equalisation grants" were made to those county and county boroughs whose resources were below a minimum based on average rateable value per head of weighted population. The factors were: (1) density of population, and (2) child population relative to total population. Rate deficiency grants on a more generous basis still have now replaced the equalisation grants, and are payable direct to district and non-county borough councils as well as to authorities with county status.

### **Financial Procedure**

Through their finance committees, councils frame annual budgets of income and expenditure. Usually each service committee (education, housing, etc.) produces an estimate of probable expenditure, and this is passed on to the Finance Committee, which makes up the budget and submits it to the whole council for consideration. The income must fit the expenditure, not the expenditure the income. There is no legal upper limit to the rates that may be levied, and grants bear a relation to rates and programmes, so that income for ordinary services is guaranteed. For capital projects, loans are required, and all authorities are entitled to borrow. Normally they require the approval of an appropriate central authority, and when loans are raised they are secured without priority by the revenues of the local authority. When estimates have been approved, and sources of income indicated, the various committees are authorised to spend up to a fixed amount during the year. Should a committee desire to spend

money on some unforeseen project, a supplementary estimate is necessary, the Finance Committee has to be informed, and the consent of the full council must be obtained.

All councils, except parish councils, are required to set up a "general rate fund," or its equivalent under another title. Into this fund, as into the Consolidated Fund of the central government, all income is paid. Sums paid out must be duly authorised, and elaborate precautions are taken against improper use of local authority funds. District councils have to keep two funds, one applicable to the whole district, and the other to the individual parishes on whose behalf the district councils expend money. Local authority accounts are made up each year and are in all cases subject to audit. Except for boroughs outside London, all authorities must submit their accounts to the District Auditor. Any payment illegally made may be surcharged on councillors who voted for it. Or, if the error in making the payment has been the responsibility of an official, the official is himself surcharged. Surcharge is not a function of any auditor other than the District Auditor, but proceedings can, of course, be taken against any person (or persons) who has been responsible for illegal payments. Gradually, the District Auditor has come to have his services used in local government audit. Even in boroughs outside London, some accounts, such as those of education authorities, must be submitted to the District Auditor, and any borough authority can approach him if the members of the council so desire. Ultimately, a uniform system of audit and presentation of accounts is likely to come about. The Ministry of Housing and Local Government exercises general supervision over the accounts of authorities, and this supervision, which allows for the making up of statistics for the country as a whole, tends to iron out anomalies in accountancy.

### **Central and Local Government**

Most local government authority derives from Parliament, usually by direct enactment. The principal governing bodies have been set up by statute, and their functions have in all cases been prescribed or modified by statute. Power over local authorities is exercised by Departments of State and by courts



of law. Judicial control is for the most part similar to that exercised by the courts in regard to any infringements of the law. But control by central government is often quasi-judicial in character, especially so far as the Ministry of Housing and Local Government is concerned.

Government departments are entitled to withhold grants-in-aid unless they are satisfied with the service given by a local authority. In 1947 the Salford Watch Committee agreed to the promotion of their Deputy Chief Constable to the position of Chief Constable. The Home Office objected to the proposal and threatened to withdraw the entire police grant. In face of this threat, Salford proceeded to a new appointment. Loans cannot be raised by local authorities except with the central government's consent, the Minister of Housing and Local Government usually being the responsible person for issuing the sanction. The L.C.C. has similar powers over the loan powers of the metropolitan borough councils.

Failure on the part of local authorities to carry out their statutory duties may result in provision being made by the appropriate Government Department. For example, the Minister of Housing and Local Government may provide a proper drainage system if a local authority fails to do so. Orders issued by Ministers under Acts of Parliament must be complied with, and members of local councils can be brought before the courts of law if they disobey injunctions. People who are aggrieved by the actions of a local authority may, under certain circumstances, appeal to the Minister for a redress of grievances. The most usual type of appeal occurs in connection with alleged infringements of the rights of private property (*e.g.* when land is being compulsorily acquired by a local authority).

The Minister of Housing and Local Government has powers in regard to the appointment and dismissal of certain officers. Public Health inspectors may be appointed and dismissed only with the consent of the Minister. Medical officers of health cannot be dismissed except by consent of the Minister.

Inspection is another way by which central control is exercised. Police, public health, and educational services are all subject to inspection by approved officers of the central government. An unfavourable report may have important repercussions.

When an authority desires to promote a Private Bill in Parliament, the consent of the Minister of Housing and Local Government is necessary. The Minister must be furnished with relevant information, and may conduct an inquiry. He usually reports to Parliament on the desirability of the proposals made by the local authority.

Ministers are usually entrusted with the task of improving and developing the social services which come within their orbit. To further these objects, they are entitled to send out circulars, digests of information, and explanations of policy. A local authority is wise not to ignore the advice offered by a Ministry.

It still remains true that local governing bodies have wide discretionary powers. The tradition of local government is too well rooted to allow detailed control from Whitehall. There is a tendency to put new services into the hands of civil servants working in the field, and some of the traditional work (as in public assistance) of local authorities has been withdrawn from them. But much remains, and in some cases (*e.g.* fire services) the local authorities have regained powers temporarily lost. The vitality of local government is considerable, particularly in the bigger authorities, and there is no immediate danger that local government will decay.

## CHAPTER XIII

### SOCIAL WELFARE

#### **The Welfare State**

Before the nineteenth century, the main business of government was to defend the country from attack and maintain peaceful conditions at home. Under these conditions, men made bargains to buy and sell goods and services, and were held to their contracts by their sense of social justice and, in extreme cases, by the law. When misfortune came to individuals, they relied mainly on personal savings, family help, or assistance from institutions with charitable objects. The State came in only when all other methods had failed. There was a stigma attached to the receipt of State help; it was provided only for those in the most unfortunate circumstances; and the amount spent was kept down to a minimum. With the coming of the Industrial Revolution and the rise of democratic ideas, a new view of the State gradually emerged. The opponents of better State provision for the unfortunate were not as a rule either hard or cruel. They believed that the individual should help himself, and that the State should assist only in the last extremity. The Chartists, who stood for universal suffrage in the first half of the nineteenth century, aimed fundamentally at securing acceptance for a new view of the function of the State. Their object was to put the remedy for social ills on the broad shoulders of the whole community. The Chartists failed, but their aims became the aims of a later generation of reformers. Slowly, statesmen came to regard the State as an instrument for social welfare. In 1868 an Act of Parliament allowed local authorities to use compulsory powers in dealing with houses "unfit for human habitation." After this, legislation slowly increased in quantity. In 1910-11, a leap forward occurred, with the National Health Scheme. Since that time the Welfare State has evolved, providing not merely necessities for the destitute, but amenities for all its citizens.

### **Children and Adolescents**

The care of the child by the State begins in the ante-natal stage. Through the good offices of the central authority, additional food is made available for expectant mothers during times of food rationing; and local authorities are given the power of setting up maternity homes and clinics where ante-natal treatment and advice are given. Births must be notified to the Registrar, who is an officer of the county council, or county borough council as the case may be. It is also compulsory to notify the medical officer of health when a child is born. Health visitors can be called upon to visit the home; and domestic help is provided by many authorities for expectant and nursing mothers. It is a function of the local authority to see that there are sufficient registered midwives in any area, either by making appointments directly or by making arrangements with suitable voluntary organisations. Private nursing-homes must be registered with local authorities. Under the Family Allowances Act, 1945, parents became entitled to a weekly payment in respect of the second and each succeeding child under the age of sixteen. This plan was later modified to allow for higher payments for the third and subsequent children than for the second.

The Family Allowances scheme is administered by the Ministry of Pensions and National Insurance, although the allowances are paid through the Post Office. In addition to cash benefits, there is provision by local authorities for preserving the health of young children. Clinics supply post-natal as well as ante-natal help. Children are weighed regularly, special infant foods are supplied, and advice is given when physical progress is retarded. Some authorities provide nurseries and nursery schools to assist mothers who do regular work in workshops or factories. At the age of five, children are required to attend schools, which are either provided or approved by the local authority. Free education, even to the extent of some boarding-school provision, is available in primary, secondary, and further education. Adolescents leaving school are advised, through local offices of the Ministry of Labour, about future employment; and they are also recommended to take up some form or forms

of organised social activity. County and borough authorities have Youth Committees and Youth Organisers. Colleges for training youth leaders are already in existence, e.g. at Leicester.

For children deprived of the advantages of normal home life, a new charter was prepared and took effect in 1948. Instead of the somewhat chaotic provision made in earlier times, the Children Bill provided that county and county borough authorities should set up Child Welfare Committees, upon whose shoulders should rest the responsibility for children not otherwise properly cared for. It became compulsory to appoint a Children's Officer from a short list approved by the Home Secretary. The main object was to secure that real home life should be made available to all "unwanted" children. Foster-parents are sought rather than institutional provision. To this end applicants for the position of foster-parents are encouraged by the payment of reasonable maintenance fees and by grants from local authorities to assist in paying any approved expenses in connection with the children's education.

It is not likely that sufficient suitable foster-parents will be found for the thousands of children whose homes have been broken up by death or family disputes. Surveillance of voluntary children's homes is therefore an important part of the duty of local authorities. In all this work the local authority acts in conjunction with the Home Office. Persons who wish to establish children's homes must notify the Home Office, and cannot continue their activities unless their standards are high enough to meet the conditions of registration. The Home Office is also empowered to make regulations for children who are boarded out by local authorities. Wherever the "unwanted" child happens to be, whether at home, in hospital, or in school, responsibility for his welfare rests with the Child Welfare Committee of the local authority.

### **Employment**

The principal Ministry concerned with the regulation of employment is the Ministry of Labour, which was established under the New Ministries and Secretaries Act, 1916. To the

Ministry were transferred, *inter alia*, the duties of the Board of Trade Employment Department, which had been concerned with the Labour Exchanges set up under the Labour Exchanges Act, 1907. These Exchanges were to assist employers and workers by acting as information bureaux. Employers were to inform the Exchanges of their needs, and workers who were unemployed or desired a change of employment were to use the Exchanges to find out where was the best chance of their obtaining the work for which they were fitted. Just prior to the transfer of powers from the Board of Trade to the new Ministry of Labour, the Exchanges came to be known as Employment Exchanges, and later as Employment Bureaux, but the adjective "Labour" persisted in ordinary speech.

During the period of economic depression which followed the brief boom after the First World War, a comprehensive system of National Unemployment Insurance was created. The experiment of unemployment insurance had been tried in 1911 for the building-trades, where employment tended to be spasmodic. A scheme based on experience from 1911 onwards was launched in time to prevent an overloading of the poor-law system, for which local authorities were responsible. Unfortunately, many men were out of work for long periods and "ran out of benefit." They were then subjected to a means test operated by the local authority. This was modified by the setting up of an Unemployment Assistance Board, allied to the Ministry of Labour. This subsequently became the Assistance Board, when its functions were enlarged, and, ultimately, the National Assistance Board. The officers of this Board now cater for all classes of persons who, for some special reason, get no benefit or receive inadequate support from State or other insurance schemes.

On occasion it has been found that there are too few people ready to undertake essential work. This applied particularly in war-time and to some degree after the Second World War. The Government was therefore armed with power to "direct" labour. Orders in Council were approved permitting a limited amount of direction in peace-time, though these powers were little used and were abandoned in March

1950. The power to direct labour was, however, used extensively in war-time. Thousands of men and women were compelled to undertake particular kinds of work, essential for the national effort. The Government has, in the main, used persuasion rather than force in peace-time. Extensive advertising followed the taking over of the coal-mines by the National Coal Board. The advantages of the mining industry, *i.e.* reasonably high rates of pay, certainty of employment, and pride in doing a job vital to the success of the country as a whole, were points emphasised steadily in the daily and weekly press. In later years, the National Coal Board assisted the transfer of redundant workers to new occupations. With the fall in the demand for coal, adjustments had to be made, which involved the closing of unprofitable mines. In 1960 the Local Employment Act was passed, repealing former legislation concerned with the distribution of industry. Under the 1960 Act, the Government makes grants to assist private enterprise with expansion programmes in areas where high unemployment exists or is threatened.

### **Housing and Planning**

Because the provision of good houses is allied to the maintenance of health, the Ministry of Housing and Local Government has an important task. Slum clearance and municipal housing schemes were begun in the nineteenth century as a consequence of the "Sanitarianism" of Disraeli, whose Artisans' Dwellings Act was a milestone on the road to the large-scale provision made in the twentieth century. The original purpose was to undertake the building of houses for working-class people who could not secure satisfactory accommodation in any other way. But the phrase "working class" came to be interpreted liberally, and many people of middle-class status came to live in "council houses." In some areas the rents of council houses were not within the capacity of the poor man's purse. The accommodation might be superior to any other accommodation at the same rent, but standards were always set high, and many people had to live in tumble-down shacks rather than go to live in better houses but have a

smaller portion of wages left over for food and clothes. Since the Second World War, housing shortage has been acute. Building virtually ceased in war-time, bomb damage accentuated difficulties, the number of families increased, and the clamour for houses was continuous in the post-war era. For a time, local authorities alone had houses built, and even when privately built houses went up, they did so in small numbers. Another feature of the rehousing policy of the Government was the erection of pre-fabricated houses designed to last ten years. These were purchased through the Ministry of Works, were erected on suitable sites (compulsorily acquired, if necessary), and helped to relieve a desperate situation.

Planning was a function of the Ministry of Health from 1919 until the creation of the Ministry of Town and Country Planning. The new Ministry, working in conjunction with local authorities, was empowered to consider the siting of any new buildings. The object was to prevent the development of ugly "ribbon building," which disfigured the countryside in the period between the wars, and secondly to create communities which might develop a genuine social life. Planning was at first a function of smaller authorities like district councils, but in 1947 the larger authorities were given all the planning functions in their area, subject, of course, to the approval, for major projects, of the Ministry of Town and Country Planning. The Ministry undertook experimental work in the creation of new towns. A good deal of controversy was aroused, *e.g.* over the Stevenage project. The plan to develop this comparatively small place into a large urban community caused a good deal of opposition from landowners, who felt that the new town would ruin their properties. Public inquiries were held, and eventually the legality of the Minister's decision was raised in courts of law. The House of Lords gave a verdict for the Minister, and work on the new £30 million town began. In 1951 the work of planning passed to the Ministry of Local Government and Planning, later renamed the Ministry of Housing and Local Government.

War-damaged areas may be redeveloped on new lines as "reconstruction areas," and new development may take place



in areas of "bad lay-out and obsolete development." Owners whose property is adversely affected may, under certain circumstances, claim compensation.

An important feature of the Town and Country Planning Act, 1947, was that from 1st July 1948, all land development became subject to the Central Land Board. Development rights belonged to the State, and the Board was to sell development rights to purchasers of property for development. If an owner wished to develop land by building on it, and had secured the permission of the local planning authority, the increase in value was to be paid to the Central Land Board, which acted on behalf of the State. In spite of this, land continued to be sold for building purposes at prices far above the value of the land as used at the time of the sale. Portions of farm land sold in this way involved the purchaser in a double payment for development: first the excess payment over agricultural value paid in the original purchase price; and secondly the development charge which the Government levied as soon as development was approved. Where, however, development was approved before 1st July 1948, a purchaser who subsequently carried out this development was to pay nothing to the Central Land Board. In many cases, however, land obviously ripe for development could not secure local authority approval before the appointed day. Under these circumstances an owner could make application for a "hardship" allowance. But the difficulty in operating this scheme led to its abandonment. However, one anomaly remained. Unless an owner had registered under the scheme, a compulsory purchase order by an authority meant that no payment could be made for development value. The suicide of a Mr Pilgrim, who had failed to register, led to legislation in 1954 and 1959, under which higher payments could be authorised.

## **Health**

One of the principal functions of the Ministry of Housing and Local Government is to promote conditions favourable to the general physical well-being of the community. All new houses must be provided with an approved drainage system, and where the authority has a main sewer conveniently

situated, owners of buildings less than a hundred feet away may be required to have their drainage system connected to it.

The supply of pure water is another legal requirement, though there still remain a few remote houses where the supply is not really adequate. In almost every area, however, regularly tested water is available in almost unlimited quantities for domestic and commercial purposes. It is illegal to pollute streams or rivers by discharging into them any sort of noxious matter. Due regard is, however, paid to the needs of industry, and the Government permits the discharge of industrial waste where no serious results are likely to arise.

Local authorities may take action to stop unsanitary conditions in workshops and factories, and any industries likely by their nature to produce obnoxious smells or other harmful effects require to have the consent of the authority to their undertaking and are subject to supervision. People who are personally verminous or filthy may be cleansed at the instance of the local authority. There are high standards of food purity and heavy penalties for infringement. Samples of foods and drugs may be taken for examination by the public analyst, a local authority official. Persons suffering from infectious disease must be removed to hospital or properly isolated at home. Free inoculation against various diseases is provided on occasion.

Public baths, whether for personal cleanliness or for swimming, may be provided, under Adoptive Acts, by authorities. Also washhouses, where the housewife may go to do the household laundry.

The maintenance of health and the prevention of accidents are the aim of much factory and workshop legislation. Safety precautions in coal-mines are in the province of the Ministry of Power, but for other places of work the Minister of Labour is the responsible Minister for most purposes. The Factory Act, 1937, which consolidated previous legislation is a comprehensive document dealing with every conceivable aspect of welfare, from the fencing of machinery to the provision of sanitary facilities.

Provision in the event of a breakdown in health or the occurrence of a serious accident takes two forms. First there

is a monetary payment available for wage and salary earners who are deprived of their earnings. This is made under the Ministry of Pensions and National Insurance, which is responsible for the administration of cash payments. Except for misfortune through accident, there is a uniform rate of weekly payment whether the recipient is unemployed, sick, or incapacitated through old age. But in the case of accident, where higher rates were traditional and were based on earnings, a somewhat higher rate of weekly payment is made. In addition to cash payments, provision is made for institutional and other care for sick people. Almost the whole population, rich and poor alike, are subject to national insurance, and share in the benefits.

Doctors who have joined the Government scheme must provide their services in accordance with the rules laid down by statute. There is also a State service by dentists and opticians. Hospital provision, which was at one time a form of voluntary enterprise, is now almost wholly a Government concern. Voluntary and local-authority hospitals have been taken over by the Ministry of Health, and Regional Boards—representative of the medical profession, the local authorities, and others—have been set up to administer regional hospital schemes. Private hospitals and nursing-homes still exist, but are subject to supervision.

Special provision exists for the maimed and the blind, and for those suffering from prolonged or incurable diseases of body or mind. Under the National Health Insurance Scheme, men who have lost limbs are able to secure artificial limbs at the public expense. There are also training-schemes for physically incapacitated persons, enabling them to train for new work and take their part in the community once more as active citizens. Welfare for the blind includes direct State provision and also assistance of voluntary organisations concerned with the work of maintaining institutions which are properly conducted. Under the National Health Scheme, the partially deaf are entitled to obtain medical aids. For those who are entirely deaf, there is special provision, as in the case of the blind. The National Assistance Act, 1948, gives to local authorities the duty of providing homes for those who

cannot look after themselves, through blindness, deafness, or other physical handicaps, including old age. "Hotel" charges are paid by the patient, but are limited in amount, and the National Assistance Board will come to the rescue where necessary. Care of the mentally deficient, handled before 1919 by the Home Office, was in 1919 transferred to the Ministry of Health, which works in co-operation with the bigger local authorities.

### **War Casualties**

Serving men and women in the First and Second World Wars, who suffered disabilities as a result of their services, were entitled to financial help when they returned to civilian life. For those who were totally disabled, a pension was provided according to their service rank, and there were also allowances for dependants (wives and children). The administration of this provision is in the hands of the Ministry of Pensions and National Insurance, which is assisted by the Local War Pensions Committees. For those who have lost limbs or in some other way received disabilities which are certain to be lifetime handicaps, pensions are payable without any further review. But in many cases injuries are temporary, and in such cases pensioners are required to report, when asked, for new medical examinations. Allowances may then be raised, lowered, or kept at the existing level, according to the medical report at the time. In addition to allowances, provision is made for free treatment for war casualties, and for the use of any special aids or instruments they may require to assist them in their daily lives. Those who are unable to follow their previous occupations may be trained for new work and given assistance in securing suitable employment later on. Besides normal State help through the Ministry of Pensions and National Insurance, there is aid from voluntary associations to press the cases of those who are thought to have been unfairly dealt with, and to supplement State grants and allowances which have in many cases proved inadequate.

If a service man has been killed, his widow receives a pension, somewhat higher than would be received under the National Insurance Scheme, which came into operation in

1948. For widows of N.C.O.s and commissioned officers, there are higher rates of pension than for widows of private soldiers. Maximum widows' pensions are paid to those who are bringing up children. In addition to the pension for the mother, there is an allowance for each child. An additional sum may be paid to cover necessary educational costs for children after they reach the age of five. In many cases no extra educational payment is made, since a wide scheme of free educational provision is adequate. But where committees agree that the children need, or would benefit from, education which is not State-provided, sums up to a prescribed upper limit may be paid to assist in meeting school bills. The object is to prevent children of men who were killed or died on service from being penalised through lack of money which would have been available for their education had their fathers survived. If a widow dies, the children's minimum allowance is increased, and special arrangements exist to see that children are cared for in, and provided with, a living standard similar to what they would have had but for the father's death during the war.

## **Recreation**

The State is intimately concerned with leisure-time activity. Theatrical employers and all agencies for theatre work must register with the appropriate local authority. Theatre licences are normally issued by local authorities, but in a few areas the Lord Chamberlain licenses theatres. His consent is necessary before any new plays can be publicly produced anywhere in the country. Cinemas must be licensed, and rules are strictly enforced in regard to exits and entrances. In south-east England, premises used for music and dancing, which are open to the public, must be licensed by the local authority. Elsewhere, licences are issued by the J.P.s. Race-courses and tracks require the licence of the local authority, and the Ministry of Housing and Local Government may intervene for or against projects to lay out such courses.

Recreational facilities may be provided directly by central and local authorities. Public lending- and reference-libraries are built at the instance of local authorities, and, though they

are in part educational, they are also intended to provide light reading for all sections of the population. Museums and art galleries may be provided, with or without the assistance of voluntary help. It is within the scope of local authorities to accept gifts of land for recreational purposes and also to acquire land, where necessary, for public playing-fields and open-air entertainment. Authorities may co-operate to establish open spaces for the public benefit. The co-operation of the London boroughs and other authorities has led to the creation of the famous "Green Belt," which enables Londoners to enjoy fresh air and sunshine within reasonable distance of their homes. Under legislation passed in 1948, local authorities were empowered to use part of their funds to sponsor musical and other entertainment. The central government is also empowered to undertake the purchase of buildings and other necessary adjuncts of operatic and theatrical production. The Arts Council of Great Britain, formerly the Council for the Encouragement of Music and the Arts, is a Government institution designed to promote the spread of interest in art, music, and the theatre. Under its auspices halls may be hired, artists paid, and concerts given. The Government subsidises the Covent Garden Opera House by means of an Exchequer Grant administered by the Arts Council. Government expenditure on provision for games, sports, and other physical recreation is likely to grow, following the recommendations of the unofficial Wolfenden Committee on Sport.

### **Delinquency**

The attitude of society towards those who break the law has gradually changed in a humanitarian direction. The object of punishment is increasingly directed towards reform of the offender. Attempts to abolish capital punishment in 1948 and 1956 both failed, in each case after the defeat in the House of Lords of legislation passed by a small majority in the Commons. The Home Secretary, however, continued to recommend the Crown to use the prerogative of mercy, and, though this prerogative was not applied indiscriminately, after the passing of the Homicide Act, 1957, hanging was rare.

since it was the penalty for killing only if associated with robbery, or the outcome of shooting, or resulting from an attack on policemen or prison officers.

The Criminal Justice Act of 1948 formally abolished the obsolescent distinctions between "divisions" in prison sentences; hard labour was also to go by the board. In practice, many of the changes proposed had virtually taken effect under a prison system growing steadily more humane. The tendency for a period after the Second World War was to increase the number of people in gaol. "It seems clear," said the Prison Commissioners' Report for 1947, "that the daily average population must rise beyond 20,000 in the near future." The gloomy forecast was, in fact, fulfilled. Nevertheless, a humanitarian policy has been followed for the most part, though brief periods of rough treatment are not ruled out. The general principle is that the offender is treated as a potentially good citizen rather than as a potential gaol-bird for life. The value of this policy is difficult to estimate for older offenders, but there seem to have been some good results from the system for young offenders. Most boys sent to "Home Office schools" make good later in life. In some places freedom amounts almost to the equivalent of ordinary civilian life. At Usk, one of the Borstal institutions, there is pocket-money, boys belong to "houses," and may if well-behaved move into huts on the hills where they have comparatively little supervision. They work for neighbouring farmers and usually keep to the rules. The transition to normal civilian life is thus effected more easily.

### **Bereavement and Old Age**

Widowhood, which is one of the principal problems of modern society, was sympathetically dealt with under the National Insurance Act which came into force in 1948. A substantial pension is provided for young widows without children for the three months immediately following bereavement, but after that the pension ceases, as it is expected that widows will normally become employed in remunerative occupation. Older women who become widows and have no children are, however, entitled to a continuous pension. For

a widow with children, there is a regular weekly allowance for herself and for each of her children until the latter reach employable age. There is also a death allowance in a lump sum to meet the necessary funeral expenses.

Old-age pensions were replaced by "retirement" pensions. These become available to men at the age of sixty-five and to women at the age of sixty. A man and wife secure a joint pension when the man is sixty-five, irrespective of his wife's age. But, until she is sixty, she does not herself draw the money. To encourage active people to continue working after sixty-five, it was provided that as a reward for forgoing a pension at sixty-five, an additional sum should be paid when pension was payable, the additional sum being based on the period elapsing after the sixty-fifth birthday before the eligible person retires and takes the pension. No increments are added for any period a man may work after the age of seventy. Small earnings are possible without reduction in retirement pension; and the extent of unearned income is not taken into account for those who qualify by regular contributions (or through marriage to a partner paying contributions). For those who do not "qualify" for pensions, there is a means test. In addition to provision through the Ministry of Pensions and National Insurance, the National Assistance Board may be approached in cases of special hardship, and this Board will, for example, contribute to a pensioner sufficient to enable him to pay his way in an Old People's Home run by a local authority.

### **Integration of Welfare Schemes**

One of the most valuable achievements after the Second World War was the creation of a more orderly system to meet the misfortunes of individuals in society and provide speedy as well as adequate remedies. During the war, much interest was taken in the proposals of Sir William Beveridge (later Lord Beveridge). In a Report issued in 1942 he advocated the setting up of a Ministry to deal with all cash payments to those in need, and the arrangement of contributions by employees, employers, and the State, so that a single stamp and a single card would suffice for a variety of



purposes. He also suggested that there should be uniformity in the scale of payments instead of the chaotic differences existing at the time. Payments in respect of unemployment, old age, or ill health should all be at the same level. Alongside this, he pressed for family allowances, a policy long advocated by reformers like Eleanor Rathbone. The main outlines of the scheme which Beveridge drew up as a one-man report were accepted by the Coalition Government and were in substance adopted by the Labour Government which came to power in 1945. Cash payments were a little higher than Beveridge had suggested, but the increased cost of living was adequate reason for the difference. In some other minor respects alterations were made, but in substance the Beveridge scheme for social security took effect in the National Insurance Act and National Insurance (Industrial Injuries) Act, both of which came into effect in 1948.

## CHAPTER XIV

### EDUCATION

#### **The Background**

Before the nineteenth century the State was hardly concerned at all with educational provision. In the Middle Ages the Crown issued charters of incorporation to the Universities; under Henry VIII and Edward VI a little of the monastic wealth taken by the Crown was used for educational purposes, but no regular supervision was exercised. In the seventeenth century schoolmasters were not allowed to teach unless they took the Sacrament according to the rites of the Anglican Church, but a nominal membership of the Church became sufficient in the eighteenth century, though most of the teaching work in schools and universities was in fact done by Anglicans who attended Church regularly. It was during the eighteenth century that substantial efforts were made to make the country literate, and Sunday Schools were established to teach the rudiments of reading so that children might be able to read the Bible for themselves. Efforts in this direction were made by Nonconformists as well as by Anglicans.

In 1802 Peel's Factory Act required employers to provide instruction in reading, writing, and arithmetic, during the first four years of apprenticeship. The Act was not properly enforced, but stood as evidence of the sympathetic attitude of the Government to educational provision. In 1833 the Government proposed, and Parliament agreed, to allot £20,000 a year to two societies: one was the British and Foreign School Society, a Nonconformist body founded in 1808 by Joseph Lancaster; the other was the National Society for Promoting the Education of the Poor in the Principles of the Established Church, founded by Bell in 1811. Each of these societies received £10,000. So strong was the public support given to these societies that, despite the development of State-provided

education on the Continent, no Government provision occurred in England until 1870.

The Elementary Education Act, 1870, which was introduced by Forster in one of Gladstone's Ministries, gave support to the existing voluntary system, but enacted that "there shall be provided for every school district a sufficient amount of accommodation in public elementary schools for all children resident in that district for whose elementary education efficient and suitable provision is not otherwise made." For the purpose of carrying out this object, the country was divided into suitable areas, and school boards were set up to administer the scheme. In 1880 attendance was made compulsory for those between five and thirteen, but, on passing an efficiency test, a child might leave at twelve, or even eleven in agricultural areas. In 1891 a free place could be claimed for any child in an elementary school. Religious teaching was given in the new "board" schools in accordance with the "Cowper-Temple" clause of the Education Act of 1870. "No religious catechism or religious formulary which is distinctive of any particular denomination" might be taught. In the voluntary schools, however, teaching was in accordance with either Anglican or Nonconformist beliefs. Any parent could secure exemption from religious teaching for his children in any type of State-aided school. In 1897 the Government gave voluntary schools a grant-in-aid of five shillings a year for each scholar in attendance, but with the virtual disappearance of fees, under the Act of 1890, voluntary societies had to raise considerable sums through donations and the organisation of money-making activities. School boards depended wholly on income from rates at first, but received grants-in-aid where necessary from 1897 onwards.

The Education Act, 1902, was a big step forward. The school boards were abolished, and existing local authorities were given educational powers in regard to both types of State-aided school. Schools which had been built under the auspices of the old boards were known as "provided" schools, and this name was to apply to any schools built at the instance of the new education authorities. Voluntary schools were described as "non-provided." The other important step

taken in 1902 was to give local authorities powers in regard to secondary and other types of education. Technical education could be assisted by local authorities from 1889 onwards. But the field of operation was now greatly increased. Authorities could grant scholarships to existing foundations, or, where necessary, they could make provision themselves.

The local authorities endowed with these powers were county councils, county borough councils, councils of non-county boroughs where the population exceeded 10,000, and urban district councils where the population exceeded 20,000. This arrangement, with minor modifications, persisted until 1944, when a radical overhaul of the system took place. In certain matters, however, important developments took place between 1902 and 1944. The "Fisher" Act of 1918 made the school-leaving age fourteen, with local authorities given the option to raise it to fifteen. Children under twelve were not to be employed at all, and any part-time employment between twelve and fourteen was strictly limited. Powers were given to establish holiday camps and other recreational facilities. Nursery schools could be built and run at the option of the authority. The local authorities were also to provide the necessary means for students of ability to secure the advantages of higher education. Day continuation schools were contemplated for the whole country, but the depression which began in 1921 led to the abandonment of this project, though local authorities could provide "continued" education at their own option. Financial limits on educational expenditure were removed, and the Exchequer grant to authorities was to include not less than fifty per cent of approved costs.

### **The Education Act, 1944**

The Education Act of 1944 is the foundation-stone of the present educational system for the country as a whole. Previous Education Acts were repealed and the new comprehensive statute took their place. To a large extent this Act was prepared for by the changes following the Report of the Hadow Committee of 1926, which advocated a complete re-organisation of "elementary" education. The schools were to be divided into primary (up to age eleven) and post-primary

(age eleven onwards). The Government accepted the Report ; and reorganisation, together with a rise in school-leaving age to fifteen (subject to some exceptions) took place gradually in the next few years.

Under the Act of 1944, the Board of Education was transformed into a Ministry, indicative of its increased prestige, and the broad scope of its duties was enlarged "to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under its control and direction, of the national policy for providing a varied and comprehensive educational service in every area." Two Central Advisory Councils were created, one for England, the other for Wales.

The statutory educational system was organised "in three progressive stages to be known as primary education, secondary education, and further education," and it is the duty of local authorities to assist in "the spiritual, moral, mental, and physical development of the community." The first Minister of Education under the Act, R. A. Butler, declared that education in the three "R.s" was to give way to education based on the three "A.s." The three "R.s" were reading, writing, and arithmetic, and the three "A.s" are age, aptitude, and ability.

The principal local education authorities are the county councils and county borough councils. Within county areas there are divisional authorities acting on behalf of the county authority, but in county borough areas there are no divisional schemes. Some boroughs and urban districts with populations exceeding 60,000 or with elementary-school children on the roll exceeding 7,000 claimed the right to be "excepted" districts. These areas were entitled to set up their own schemes of divisional administration instead of being subject to the county L.E.A.

Both primary and secondary education are organised in four types of schools. Schools established by the L.E.A. are County Schools. Then there are Voluntary Schools, which, while retaining a distinctive character, are maintained wholly by the L.E.A. Thirdly, there are Assisted Schools, which

have considerable autonomy but, in return for assistance, are required to permit a number of L.E.A. nominees to attend. Finally, there are independent schools, which must be registered, and are subject to inspection, but receive no grant from local or central authority and are free to select their pupils and to charge fees.

In pursuit of an efficient educational system, local authorities must see to it that there is adequate provision made for further education, both technical and cultural. In this regard they must consult with Universities and voluntary organisations already in the field, and they may co-operate with them to whatever extent is found desirable.

### **Types of School**

The County Schools are those formerly known as "provided" or Council Schools. They are established by the Local Education Authority and are wholly maintained out of taxes and rates. Nursery Schools and Special Schools are not included in the "county" category, but it is laid down in the Education Act of 1944, as in the Act of 1918 which was the first to deal with this problem, that L.E.A.s may develop educational schemes for those under five, where the need exists, thus bringing to fruition the work of voluntary provision which had been furthered so ardently by pioneers like Margaret Macmillan. Also, L.E.A.s can make special provision for children of compulsory school age who are not likely to find the ordinary educational provision adequate.

In this way the experience of experiment in the past with backward children can be utilised for an extension of facilities to all in need, instead of to the few whose parents could afford to pay. The whole range of normal provision (modern, technical, grammar) comes within the scope of County Schools, which have equal status among themselves. These schools are "managed" locally in accordance with provisions made by the L.E.A., but for County Primary Schools, where there is a minor education authority (Non-County Borough Council, Urban District Council, or Parish Authority), not less than one third of the managers are elected by the minor authority. The rest are normally nominees of the L.E.A. In

County Secondary Schools the "governors," who correspond to the managers in primary schools, are elected in the same way.

Voluntary Schools are the heirs of the well-established system of schools promoted in the nineteenth and twentieth centuries by religious societies. Where the L.E.A. becomes responsible for all the expense of the school, the number of managers or governors is determined by the Minister of Education in consultation with the L.E.A., but there are only one third "foundation" managers or governors. The rest are appointed by the L.E.A. and the minor authority (if any). In effect, this means that the power of local management passes out of the hands of the "foundation" (*i.e.* the voluntary society) and goes to the education authorities. In this way Government assistance has led by gradual steps to the enforcement of conditions in which autonomy has almost disappeared. The designation "Controlled School" is therefore appropriate.

In the case of schools where a proportion of expense is borne by the voluntary society, there is a different arrangement. In "Aided" or "Special Agreement" Schools, two thirds of the local managers are appointed by the voluntary society, the remainder being appointed by the L.E.A. and the minor authority (if any). Local management is concerned with the letting of school premises out of school hours, and with the religious instruction given to those who attend in school hours. In the case of Aided or Special Agreement Schools, the local managers are also responsible for any debts on the schools, for alterations in the premises required to bring them up to L.E.A. standards, and for structural repairs. The Minister of Education has authority to make grants to managements which have financial responsibility. Three-quarters of the outlay on construction, alterations, and repairs, required to maintain L.E.A. standards, may be secured in this way.

Assisted schools are those which preserve their independence of the L.E.A., but are subject to a measure of control by the Minister. For the most part, they are old endowed grammar-schools, able to supplement fees from trust funds,

but unable in post-war times to make ends meet from these sources. Grants are made *per capita*, and these are conditional on the maintenance of recognised educational standards and on the admission of children whose parents cannot pay the normal school fees. Fees are graded in accordance with a means-test for the parents, who pay no fees at all unless their income is above a certain limit.

Beyond the Assisted Schools are the Independent Schools. These include the great Public Schools, where fees are high, and trust funds usually considerable. Many of them accepted Government inspection long before 1944, but few have ever accepted financial help from the Government. Now none receives any grant from either L.E.A. or Ministry. Fees and foundation income suffice for maintenance of buildings as well as payment of staff. Such schools must have a minimum of five pupils, and are liable to Government inspection in respect of accommodation and teaching. This inspection, when in full running order, will be an advance on the old position, when schools might be run by people without academic qualifications and in any buildings which the local sanitary authority did not actually condemn. The great Public Schools are independent, but they do not insist that parents or guardians shall pay fees for all the pupils. Some places are offered to children from County and other schools. Children are selected by the L.E.A., which grants scholarships to cover the tuition fees and other costs of education. The term "Public School" is restricted in popular usage to the great independent schools such as Eton and Harrow. But all schools represented on the Headmasters' Conference are technically Public Schools. Among these are many schools which have long since surrendered their independent status.

### **Religious Instruction**

Religious worship and teaching are based on well-established practice. All the schools founded by the religious societies in the nineteenth century included in the time-table religious worship and instruction. The "provided" schools, which arose from 1870 onwards, avoided teaching the formulas of specific religious bodies, but were expected to



inculcate the fundamentals of Christian teaching. Under the Act of 1944, traditional procedure is largely followed.

Collective worship is prescribed in all County and Voluntary schools. This is taken by the whole school together unless the accommodation is unsuitable. Religious instruction must also be provided. But parents may arrange for their children to be absent from collective worship and religious instruction. Attendance at a County or Voluntary school must not be made conditional on a pupil's attendance at any Sunday School or place of worship. But parents who send children to a school where religious instruction is, in their view, unsuitable for their children, may withdraw them for periods of religious instruction elsewhere. If, however, religious instruction of a suitable kind can be provided at another school conveniently situated, children may be transferred to such a school for all instructional purposes.

In County Schools the religious teaching and the collective worship must not be along the lines of any particular denomination. Teaching may not include any catechism or doctrine distinctive of any religious sect. The "Cowper-Temple" clause of the Forster Act, 1870, is the parent of the modern system of religious teaching. It was laid down that in "provided" schools religious teaching should be given which might be regarded as the common denominator of the recognised expositions of Christian doctrine. There was always difficulty in discovering exactly what ought to be regarded as fundamental principles of faith, although the whole instruction was based on the Bible. Under the Education Act of 1944, provision was made for teaching according to an "agreed syllabus." In each area, the L.E.A. was authorised to summon a Conference representing the chief local religious interests. The recommendations to the L.E.A. might be adopted as the basis for religious teaching in the County Schools. Where Conferences failed to reach agreement, provision was made for the Minister to appoint a recommending body to prepare a syllabus.

In Controlled Schools, religious teaching is given in accordance with the agreed syllabus, but denominational teaching may be given, where the parents desire it, by

"reserved teachers," selected for their suitability to give such instruction. Not more than one fifth of the teaching staff may be reserved teachers, and the head teacher may not be "reserved." However, a Local Education Authority must inform managers or governors of primary and secondary schools respectively before making appointments, and their views must be considered before a head is appointed. Also, the L.E.A. must consult managers or governors before appointing "reserved" teachers, and the managers or governors can insist on the dismissal of reserved teachers who do not give suitable religious instruction.

In Aided and Special Agreement schools, religious teaching is directly under the control of managers or governors, and is in accordance with trust provisions, or existing practice where there is no specific provision. Where, however, parents desire teaching according to the agreed syllabus, the managers or governors must make arrangements for such teaching if there is no other suitable school in the neighbourhood to which children can go. The L.E.A. will make the provision if the local management proves unwilling or unable to do so.

No teacher, except a reserved teacher, is subject to any religious test; and no teacher, except a reserved teacher, may be required, as a condition of retaining his post, to give any sort of religious instruction.

## **Welfare**

During the nineteenth century, the religious societies and School Boards were almost exclusively concerned with buildings and teaching. But, especially in slum areas, the physical condition of children could not be wholly ignored. Some help was in fact given, but the problem demanded a national policy. In 1904 the Commission On Physical Deterioration revealed difficulties due to disease and malnutrition; and in 1906 the Provision of Meals Act allowed local authorities to provide meals to school-children. In 1909 local authorities were given the duty of instituting free medical inspection and treatment. Under the Acts of 1914 and 1918, special provision was made for the blind, deaf, defective, and epileptic,

and in 1944 still more comprehensive provision made for children in any way abnormal.

It remains the task of the L.E.A. to provide for medical inspection of children and to arrange for free medical treatment, but parents who object to L.E.A. provision can make provision in other ways. The L.E.A. must provide "milk, meals, and other refreshment," but teachers have no responsibility in this matter when the school is closed, and duties in regard to meals only includes supervision of pupils. Clothing may be supplied by the L.E.A. where children are "unable by reason of the inadequacy of . . . clothing to take full advantage of the education provided." If board and lodging are necessary to enable a pupil to go to an appropriate school, the L.E.A. may pay the necessary charges, but the parent will be required to contribute towards the cost according to his means, unless there is no other suitable school available, in which case the entire cost falls on the L.E.A. Children may not be compelled to walk long distances to school. Provision must be made to educate them by special arrangement, or transport must be made available. In a few cases this has meant the use of private taxis for a particular pupil. Facilities for recreation and social and physical training were a permissible charge for L.E.A.s under the Act of 1918. Under the Act of 1944 facilities must be provided, and to this end the Minister's approval may be obtained for the establishment of "camps, holiday classes, playing-fields, day centres, and other places, including playgrounds, gymnasiums, and swimming-baths." Standards of cleanliness must be maintained, both for pupils and premises. For children suffering from "any disability of mind or body," education by special means must be provided.

The employment of children is regulated by statute. The definition of "child" changes with the alteration of the school-leaving age. When this was raised to fifteen, the word "child" covered all persons up to that age. Under the Children and Young Persons Act of 1933, children under the age of twelve were altogether prohibited from employment. Subsequently, the age was raised, so that part-time employment was possible only for the last two years of compulsory

school life. Such part-time employment is, however, subject to by-laws made by the L.E.A. acting under the Home Office.

The Children and Young Persons Act of 1933 prohibited employment of children before the close of school unless by-laws were made specifically allowing one hour of such employment. Many authorities have such by-laws in force, with the object of allowing children to do newspaper rounds before going to school. A considerable number of authorities do not permit this type of employment, and some authorities do not permit any kind of employment of children during term-time. The L.E.A. may prohibit employment or impose restrictions "in the interest of the child." Where there is compulsory part-time attendance at a county college (provided for in the 1944 Act, but not yet introduced), young persons may count as part of their working hours the time spent in receiving formal instruction.

### **Primary and Secondary Education**

The three streams of present-day educational provision are derived from developments and experiments during a century or more. At first, State help was designed only to provide "elementary" education for the children of poor parents. This phase ended in 1889, when the newly created county councils and other authorities were permitted to supply or assist technical or manual education. Some authorities interpreted the "Code" rather freely, but were sharply checked when Cockerton, a District Auditor under the Local Government Board, surcharged the London School Board with expenditure on provision outside the "Code." The Act of 1902, however, provided for authorities to assist education over a wider field. The new councils established county Secondary Schools as well as Technical Colleges. Further progress was made under the Acts of 1918 and 1944.

Regulations for primary education require that provision be made for teaching in the use of fundamental techniques in mathematics and language. But much discretion has been left to teachers in handling subjects. The tendency has been towards evoking interest and encouraging initiative. The Hadow Report issued by the Consultative Committee (1926),

which the Government accepted as a guiding star to policy before the Second World War, emphasised that the curriculum should be "in terms of activity and experience rather than as knowledge to be acquired and facts to be stored." Accordingly, examinations for those who have reached the age of eleven are tests in fundamental techniques and also in aptitude. After the age of eleven, pupils go to whatever type of school seems most suited to develop their talents.

The recommendations of the Norwood Report, 1943, were largely followed in developing "secondary education for all" above the age of eleven. It is claimed that there are three main types of children: those with a strong academic bent, those interested in applied science and art, and those without much interest in either, whose practical abilities need to be fostered. These are served by the Grammar, Technical, and Modern schools respectively. In many cases, these schools are quite distinct. In other parts, "multi-lateral" or comprehensive schools have been set up. In these, the children from a given area need not be sharply divided into three groups, but can all receive instruction in particular subjects according to aptitude and ability.

The Grammar School, which provides what before 1944 was commonly known as "secondary" education, takes pupils who are expected to profit by the kind of education which leads in many cases to the University or some other place of higher education. Professions for which the grammar-schools provide a suitable background include teaching, medicine, the law, and the Church. The Technical School, or College, provides instruction in some "grammar-school" subjects, but leans towards the practical side in such subjects as book-keeping and mechanics. Clerical staffs, works apprentices, and the like are largely recruited from these schools. The Modern School provides an education for those children (three quarters or more of the total number of pupils), who will later on undertake work involving neither exceptional skill nor advanced knowledge. For each type of school, the aim is to provide basic knowledge essential for adequate self-expression, combined with special emphasis on local needs. In predominantly agricultural areas, for instance, the need for

relating study to rural interests, especially in the Modern Schools, has been heavily underlined.

### **Further Education**

All formal instruction outside the range of primary and secondary education is included under the term "further education." Historically, "further" education derives from a number of widely different sources. Oldest in lineage are the Universities of Oxford and Cambridge. Their activities were supplemented in the nineteenth century by modern Universities in London and other cities. Cambridge was the pioneer in taking University culture beyond the walls of the University itself. The University Extension movement spread from the older to the newer seats of learning, and stimulated the creation of other movements for sponsoring University lectures and classes for the adult population. Meanwhile, technical education was developing. Among the agents of this development were the Y.M.C.A. and the London Polytechnics. Government support was provided for Schools of Design in 1841, and local authorities assisted in technical education from 1889 onwards for part-time as well as full-time students.

It is now the duty of the L.E.A. to make schemes for the development of "further education" in the area, and these schemes are submitted to the Minister for approval. For this purpose the L.E.A. is required to consult with voluntary societies already in the field, and may co-operate with them to whatever extent is thought desirable.

Examples of bodies doing educational work with the approval of the Ministry are the Workers' Educational Association, the Educational Centres Association, and the Community Councils, linked together by the National Council of Social Service. Meetings of students, sponsored by these bodies, are held in schools and other buildings provided or approved by the authorities. The teaching and organising staff are normally paid by the societies concerned, but the L.E.A. may make grants towards classes or contributions to the salaries of organisers. The Ministry makes regulations for educational services provided by voluntary

bodies, and direct grants from the Ministry are available for organising tutors.

Technical education for part-time students is a normal L.E.A. provision, and voluntary societies are only to a minor extent concerned with provision. But adult education, which includes lectures and classes in civics, sociology, appreciation of art, music, and literature, is to a considerable degree a function of voluntary societies, assisted by central and local authorities. There is also a large amount of formal instruction outside the range of Government-assisted teaching.

For the purpose of providing the compulsory part-time education envisaged in the Education Acts, 1918-44, L.E.A.s are empowered to erect and maintain County Colleges. These buildings may of course be used for other educational purposes, at the discretion of the authority. The L.E.A. is also required to provide training-colleges, so far as these are necessary, for the training of teachers. Facilities for refresher courses may also be provided by the L.E.A. Universities and University Colleges are for the most part outside the sphere of the Ministry of Education, but the Ministry may make grants for extra-mural work. L.E.A.s are also encouraged to assist the work of extra-mural departments. The internal teaching work of Universities may also be assisted by L.E.A.s, and in some cases a large percentage of a University's income is derived from L.E.A. grants. Indirect assistance to all Universities is provided by local or central authority scholarships, which enable brilliant pupils, whose parents cannot afford fees and expenses, to attend Universities for full-time education. The major portion of University income is in all cases derived from Treasury grants, administered through the University Grants Committee.

### **The Teaching Profession**

In the nineteenth century there were no basic qualifications for the teaching profession. In their early days the religious societies could ill afford good salaries, and many teachers were overworked and underpaid. Government assistance from 1833 onwards led to better salary conditions and insistence on more adequate academic qualifications. The

religious societies set up training-colleges, which did good work. After 1870 the Government took more interest in the qualifications of teachers, and Government training-colleges were established. In the twentieth century a distinction developed between "supplementary" teachers, who had no recognised examination qualifications, "uncertificated" teachers, who had taken a preliminary examination only, and "certificated" teachers, who had passed the Board of Education's final examination. University-trained teachers were usually employed in "secondary" schools; and, as the State came to be more influential in controlling technical and grammar school education, the Board's Certificate came to be essential in most schools outside the "independent" category.

In 1944 the Ministry took over the examination system established by the Board. Success in the examinations held by a training-college entitles the student to be considered for a post as a "qualified" teacher in any primary or secondary school provided or assisted by the L.E.A.

After the Second World War, emergency training-colleges were set up to cope with large numbers of people eager to enter the depleted profession. The increase in staff necessitated in carrying out the Education Act of 1944 was met reasonably well by 1950. Recruiting for teachers then reverted to the usual system of two years' residence in a training-college (raised in 1960 to three years), or a post-graduate course of one year; and the policy was followed of staffing all Government-aided or provided schools with fully qualified teachers. Teachers who were also graduates were required for special subjects, and received additional remuneration in respect of their special qualifications.

The chief professional association among teachers is the National Union of Teachers. This body co-operates locally and nationally in determining conditions of work, salaries, and general educational policy. Other important bodies include the associations of Assistant Masters and Assistant Mistresses. Co-operation between professional associations and statutory bodies is marked in every field of educational



activity from the provision of compulsory education in primary schools to the holding of week-end schools for teachers and tutors. Experiments are constantly being tried, and new regulations and practices result from experimentation. To foster useful development, a local education authority may, with the Minister's approval, undertake or help research for the improvement of educational facilities in the area. The Minister himself is required to "promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose."

## CHAPTER XV

### ECONOMIC INTERVENTION

#### **Private and Public Enterprise**

From early times the State has played some part in directing and controlling economic activity, but it is only in the last few generations that the Government has become in any serious sense a controlling agent in the economic field. Until the Industrial Revolution had been carried through, this aspect of human life was mostly left to private enterprise. The manufacture and sale of goods might be regulated by the Government, but making and selling were not functions of the State. In the early nineteenth century, the phrase *laissez-faire* was used to describe the theory that Governments should interfere as little as possible with private enterprise. Adam Smith, author of *The Wealth of Nations* (1776), had upheld the view that prosperity was to be achieved by removing shackles from private enterprise and restricting the field of Government activity to the maintenance of order, the enforcement of contracts, and the protection of property. But the view was growing that evils in the new industrial society could be remedied only by an invasion of the strongholds of property-owners. Carlyle thundered against those who abused their privileges under an order of society based on *laissez-faire*. He was far from being a socialist in the modern sense of the term, but he was still further from being a defender of unrestrained plutocracy. Thinkers and reformers, including many of the best manufacturers, welcomed regulations and inspection to maintain decent standards in industry.

The growth of democratic ideas in the political sphere was accompanied by the growth of democratic ideas in the economic sphere. Two schools of thought appeared, both believing that regulation and inspection were not enough. The true solution of the social problem, they thought, was to be found in public control and administration of basic economic

activities. One school took the view that the people should seize the factories and farms, and establish the "rule of the proletariat." Former owners were to be expropriated without compensation, and this would herald a new era of peace and plenty in a society free from the burden of the *rentier* class.

Against this revolutionary view, which never became deeply rooted in England, was set the view of the Fabians, who expounded the theory that a gradual transformation of society was possible by which the public could secure control of production, distribution, and exchange. Revolutionary outbursts were to be avoided. Instead, a slow process of "sapping and mining" was to be undertaken. This view captured the imagination of the rising trade unionists of the late nineteenth century, who set to work to create political machinery designed ultimately to reshape the country's economic structure. Even before the Labour party came to power, Fabian influence played a part in creating a new outlook among political leaders. The older parties were affected by changing circumstances and new ideas, with the result that measures which would have had no chance of approval in the age of *laissez-faire* were carried through in the twentieth century. The Central Electricity Board was set up in 1926 by a Conservative, not a Labour, Government; and Conservatives accepted the principle of Government reorganisation of the coal industry long before the mines were brought under public ownership by the Labour Government.

### Central Planning

During the middle period of the nineteenth century it seemed to be a truism in Britain that prosperity depended on free economic enterprise. As Government restrictions were removed from trade, production expanded and the volume of external trade shot upwards. Before the Industrial Revolution, the Government had at different times made serious efforts to conserve timber resources, safeguard the corn supply, regulate the flow of bullion, and plan the country's economic well-being by holding a judicious balance between "plenty" and "security." But, as Government restrictions

were first modified and then abolished, *e.g.* in the case of apprenticeship and navigation laws, the country, by all the accepted economic standards of the time, went ahead of the rest of the world.

Unfortunately, Britain could not keep ahead, and the closing years of Queen Victoria's reign saw Britain falling back in the race. At the same time boom and depression, which had disfigured the early development to some extent, now alternated more violently. Hundreds of thousands of men were idle in the depression of the 1880's, but it was contrary to Government policy to do more than prevent them from falling victims to disease and starvation.

The competition Britain faced in overseas markets was a factor in unemployment, which showed up worst in the great export industries, but there was unemployment even in agriculture, where the entire production was for the home market. Free trade allowed foreign food to compete with the farmer's goods, and he tried to reduce his losses by labour-saving methods and labour-saving produce. In these circumstances an increasing number of people—employers and employees alike—began to question the wisdom of unrestricted trade and production. From the last years of the nineteenth century, the demand arose for some controls to be applied by the Government in the interest of the worker, who was constantly threatened with lower wages or unemployment; and in the interest of the employer, who experienced a periodical drying up of markets or a slashing reduction in profits.

The forces opposed to Government control were, however, well-entrenched. In particular spheres there was some planning before 1914, but not very much. For example, the Coal Mines Minimum Wage Act, 1912, brought the Government into a field where labour problems were specially difficult. The First World War, 1914-18, was the occasion of a vast and rapid extension of State planning and control. The railways were taken over by the Government, industries were controlled in the national interest, import duties were imposed from 1915 onwards. After 1918 some controls were relaxed, but in many fields control and planning had come to stay. The depression which began in 1929, when factories

closed down and millions were idle, underlined the need for large-scale planning.

### **Economic Planning**

The determination of general economic policy in England is ultimately a matter for Parliament. But the initiation of schemes and the executive action necessary at the highest level is the business of the Cabinet. To assist the Cabinet in its deliberations, an Economic Council was set up in 1930. There was also an economic section of the Cabinet Secretariat. During the Second World War the economic side became much more important than it had ever been before, and many of the new Ministries were concerned almost exclusively with the economic side of the war effort. The critical nature of post-war conditions led, in 1947, to the setting up of an Economic Planning Board to advise the Government on the best uses of the economic resources of the nation.

It was the business of the Board to obtain statistics relating to production and man-power in every field, and on this basis to formulate, where necessary, schemes for increased production. The Cabinet takes the responsibility for the broad policy which the Government advocates, but the detailed information on which Ministers rely was provided by the Planning Board. It was originally intended that the Lord President of the Council should act as the Minister mainly responsible for the formulation and operation of planning, but later in 1947 a Ministry for Economic Affairs was set up. The Board of Trade was closely associated with the new office, which was held by Sir Stafford Cripps. When he became Chancellor of the Exchequer he retained the title for a time. In 1950 a separate Minister for Economic Affairs was appointed to assist the Chancellor of the Exchequer, but in 1952 this Minister was replaced by an Economic Secretary to the Treasury.

The Planning Board included nominees of the Federation of British Industries and the British Employers' Confederation. The F.B.I. was founded in 1916 and received a royal charter in 1924. It is the most powerful of industrial employers'

organisations, providing information to member firms about company law, industrial insurance, and other matters on which up-to-date and reliable information is necessary. Authoritative interpretation of Government regulations is provided because of the continuous contact with all relevant Government Departments as well as through the representation of the F.B.I. on the various economic and industrial advisory bodies, such as the National Economic Development Council, established in 1962 as the successor to the Economic Planning Board. The Chancellor of the Exchequer is *ipso facto* Chairman of the National Economic Development Council.

Also represented on the National Economic Development Council is the Trades Union Congress. Founded in 1868, this voluntary association of trade unions includes within its ranks the bulk of the organised labour in the United Kingdom. Through the General Council of the T.U.C., there is a close relation with the Government of the day and with all principal Departments of State. The T.U.C. is represented on the Joint Consultative Committee to the Minister of Labour, the Catering Wages Commission, the British Transport Advisory Council, and a host of other advisory bodies. Economic planning necessarily has implications for labour and it is very rare for advisory bodies in this field not to have trade union representation.

The characteristics of economic planning in the United Kingdom are *consideration* for the people involved, *moderation*, and *flexibility*. It is true that many projects have been hurried through Parliament by the use of the "guillotine," but the preparation of the Bills before presentation in Parliament has been most carefully handled. From the birth of an idea to the setting out, clause by clause, of the principles governing the proposed change, there is regular and concentrated attention given to the subject by Government officials, employers' representatives, and trade-union leaders. As a result, all major interests have received consideration. Partly because of the attention paid to preliminaries, change proceeds cautiously.

The moderate policy even of a Labour Government is emphasised by Francis Williams in *The Triple Challenge*.

He says that "total national ownership of all the means of production and distribution, once advocated in most early Socialist doctrine, does not come within the modern Socialist concept as it exists in Britain." It has often been pointed out that the completion of the 1945 Labour Government's nationalisation programme still left eighty per cent of the country's industry in private hands. The lack of rigidity in planning is seen in the refusal to enforce a national wages policy. Each industry is left with its own machinery of negotiation. Direction of labour, which seemed at first sight to give the Government almost totalitarian powers, was in fact no more than a weapon of final resort for a few difficult cases. Few things illustrate the actual freedom of workers better than the Control of Engagement Order issued under the Supplies and Services Act, 1947. The Ministry of Labour made very little use of it, and it was revoked in 1950. In 1952 the Notification of Vacancies Order made it necessary for employers and employees in most walks of life to use the Employment Exchanges, but this was rescinded in 1956.

### **Planning in Agriculture**

The crowning triumph of *laissez-faire* policy came in the repeal of the Corn Laws, 1846. This reform secured public support in the growing urban areas. The demand for cheap food came from industrial employers who wished to keep wages in check, and from employees who wanted to get as much as possible for the money they earned. From that time until the First World War agriculture stood without Government protection against all the bitter winds of competition from the cheap food of the New World. The Corn Production Act, 1917, providing guaranteed prices for the farmer, but the refusal of the Government to continue this support in 1921 brought disaster to the countryside. A little relief was given by beet-sugar subsidies, but it was not until 1931-33 that Agricultural Marketing Acts provided for a permanent measure of security for the farming community. Schemes were made for bacon, milk, and potatoes; and imports were regulated in the interests of the schemes. Further help came in the Second World War. After that there was no retreat.

The largest single Bill for agriculture ever produced was the Agriculture Bill, 1947. The main proposal was to guarantee crop and livestock prices on condition that farming was carried out efficiently and in accordance with national needs. In this connection considerable powers are exercised by the Minister of Agriculture, but the National Farmers' Union, which is representative of the principal farmers in the country, plays an active part in advising on the prices to be fixed annually for farm produce. Inefficient farmers and land-owners are liable to be deprived of their land by the Minister, but in every case there is the possibility of an appeal to an independent tribunal, and the verdict of this tribunal cannot be set aside by the Minister. The tribunal consists of a chairman with legal qualifications, a farmers' representative, and a land-owners' representative. The local bodies responsible for advising the Minister on efficiency are his nominees, but the members of these County Executive Committees are men with agricultural experience, and they have permanent paid officials to guide their deliberations and actions. Local authorities still retain the duty of providing smallholdings, and they may make tenants enter into schemes of co-operative marketing. An important power acquired by the Minister under the Act of 1947 is the right to buy and develop land where private owners are unable to carry out the work, but there is an independent tribunal to decide appeals by farmers against Ministerial decisions.

The Agriculture Act, 1947, was the coping-stone to an agricultural policy which, over a number of years, indicated the growing concern of the State about food supplies and those who are engaged in food production. Agricultural wages are determined by wage tribunals, representative of farmers and workers. Wages control began in 1917 and was dropped in 1921. But it was revived in 1924. From that time the local tribunals had complete discretion in fixing minimum rates both for piece-work and hourly work. But a central tribunal now determines national minima, and local tribunals work on the basis of awards made by the Agricultural Wages Board.



Plans to improve particular services have been promoted by such bodies as the Marketing Boards, which were set up by the producers under Act of Parliament. Prices are determined at the national level both for purchase from the farmer and sale to the public. For the purpose of improving the efficiency of farming in all its aspects, the National Agricultural Advisory Service came into existence soon after the end of the Second World War. This service, a development of local provision made for many years by county authorities, provides expert advice for farmers on livestock, crop husbandry, and machinery. The local administration is done through the County Executive Committees.

### **Development Councils in Industry**

From the beginning of the twentieth century, the Government felt the need for expert advice on particular "problem" industries. *Ad hoc* bodies were set up with a view to collecting information and making suggestions. Among the best known of these bodies were the two Royal Commissions on the Coal Industry, the one headed by Lord Chief Justice Sankey (1919), the other by Lord Samuel (1925). Some of the recommendations of these bodies were put into legislative form. The Second World War, which necessitated change and adaptation in industry on a scale hitherto unknown, led to the use of new forms of advisory organisation, and increasing use was made of employees' and employers' representatives.

To assist the Government in furthering the industrial development of the country, the Industrial Organisation Act, 1947, provided for the setting up of *Development Councils* in major industries. The Councils are chosen by appropriate Ministers and include representatives of employers and employees. An independent chairman is appointed by the appropriate Minister. These Councils were preceded by the use of *Working Parties*, which made recommendations, after the Second World War, for the reorganisation of particular industries. The Development Councils are organised on similar lines, but are given statutory functions and a statutory form of organisation. Where a Council is not considered

necessary, the Bill allows for the Minister to consult employers and employees, and after such consultation he may himself undertake duties normally undertaken by Development Councils.

These Councils are concerned with scientific research and investigation of market possibilities. Research organised in other ways is not duplicated, but the whole range of research is co-ordinated within the framework of Departmental organisation. Councils are not commercial organisations, but they may assist the setting up of co-operative buying and selling organisations. Model factories may be run as experiments. The functions of the Councils include the improvement of factory conditions, but not the regulation of working-hours or wages, for which purpose Wages Councils and Arbitration Tribunals exist. The study of industrial psychology is within the scope of the Development Councils, which are much concerned with management and the use of labour. Recommendations cannot be forced on industry, but failure to carry out recommendations invites subsequent criticism if the industry does not prosper. The ultimate purpose is increased production by efficient methods within the framework of a happy relationship between management and worker.

### **Nationalised Industry**

The principal fuels in England are oil and coal. The oil industry is a matter of private enterprise, but the coal industry is nationalised. The Act providing for nationalisation came into force in 1947, when the National Coal Board took over the work hitherto performed by colliery companies. The industry had long been subject to extensive Government regulation and the change-over was not exactly a leap in the dark. The Coal Mines Act, 1930, established price-fixing and output organisation, and set up machinery for amalgamation. Amalgamation proceeded slowly at first, but was accelerated later. By 1947 a good deal of common policy prevailed in the coal industry. Nevertheless, as this was the first large industry taken over *in toto* by the State in England, the working of the new organisation was therefore

regarded by supporters and opponents of nationalisation with exceptional interest.

The Area Boards set up in different parts of the country are largely responsible for the operation of pits in their areas, but general policy is in the hands of the central body. Pits may be closed where they are uneconomic, and workers may be transferred to places where pits are under-staffed. Changes take place at the instance of Area Boards, but the National Coal Board determines broadly the tests of uneconomic working. The price of different grades of coal is a matter for the National Coal Board, but the management of areas by the local Boards and the reports they issue provide the basis for price regulation. Trade union leaders are members of these managerial bodies, but they do not appear as direct representatives of the workers. Public ownership involves the elimination of "private profit," but it does not mean workers' control. Workers are represented on *Production Councils*, as under private enterprise, but sound management is considered to be incompatible with syndicalist ideas in nationalised as in other industries.

Electricity is another nationalised industry. As in other nationalised industries, the way was paved by Government intervention over a number of years, the principal landmark in the progress towards nationalisation being the creation of the Central Electricity Board in 1926 as a public corporation supplying electricity on the "grid" system to privately owned electricity companies and to electricity concerns run by local authorities. From 1st April 1948, the British Electricity Authority took over the generation and supply of electricity in England, Wales, and Southern Scotland. In 1937 the MacGowan Committee, set up to investigate the condition of electrical undertakings, had reported that there were too many autonomous organisations concerned with production and supply. There were many small supplying bodies, some organised on the basis of private enterprise but with monopoly rights in specific areas, and others organised and run by municipal authorities. There was also a Central Electricity Authority to supplement local supplies and meet increasing local needs, especially at peak periods of consumption.

The British (later Central) Electricity Authority absorbed in 1948 nearly two hundred generating stations and nearly six hundred supply undertakings. Twelve Area Boards are concerned with local supply, and are assisted by Consultative Councils representing consumers. The Central Authority and the Area Boards are under the supervision of the Minister of Power, who is responsible for all the major appointments. Compensation to private undertakings was based on Stock Exchange prices of holdings over a defined period. Municipal undertakings were taken over for the cost of outstanding liabilities.

The objects of the national organisation are: uniformity in supply, including abolition of direct current; standardisation of appliances, to be promoted by the manufacture of equipment and the sale of appliances direct to the public; levelling of prices for comparable types of consumption in different parts of the country; rural electrification on a large scale; and efficiency in all branches of generating and supply. In 1957 the Central Electricity Authority was dissolved. Replacing it are two bodies, the Central Generating Board and the Electricity Council—the latter being the co-ordinating organisation for central and local boards.

Another great industry which the Government considered ripe for nationalisation in 1948 was the iron and steel industry. Before the nationalisation measure was introduced into Parliament, provision was made to amend the Parliament Act, 1911, so as to ensure, among other things, the passing into law of the Iron and Steel Bill before the end of the Labour Government's statutory term of office. The broad outline of the nationalisation scheme was different from the scheme applying to public ownership of the coal-mines. The Bill provided that each large unit in the iron and steel industry should be retained in much the same form as under private enterprise, and central control was vested in an organisation roughly corresponding to the Iron and Steel Board which was responsible for general policy in the early years after the Second World War. The spectacular success of the iron and steel industry in post-war years made it unwise to suggest radical and disturbing changes in organisation, especially in

view of the need for maintaining production levels for the export drive. The financial structure was the subject of immediate change, but the Bill provided that all the main organisation built up over many years was to be left intact, with the possibility of reversion to private enterprise. The Conservative Government, which took office in 1951, set in motion machinery to de-nationalise the iron and steel industry, but left the Government with a good deal of control through an Iron and Steel Board.

### **Communications**

Long before the Transport Act came into force on 2nd January 1948, the State was responsible, through central and local machinery, for much of the communications system of the country. Roads came under State control with the abolition of the privately sponsored Turnpike Trusts in the nineteenth century; and the Post Office was a Government organisation from the seventeenth century onwards. The telegraph system was absorbed by the State in 1870, and the telephone system was nationalised in 1911 except for Hull, which kept its own municipal system. During the First and Second World Wars, the railways were run by the Government so as to ensure their being used to the best advantage. But they reverted to the railway companies in peacetime, though still subject to extensive State control.

In broad outline, the Transport Act, 1947, which was the most far-reaching of the Government's nationalisation measures, provided for the transfer to the State of all the principal railway undertakings and all the long-distance road transport and canal undertakings. The British Transport Commission, set up by the Act under the Ministry of Transport, was "to provide, secure, and promote the provision of an efficient, adequate, economical, and properly integrated system of public inland transport and port facilities." The administration was in the hands of the Commission itself, or of executive bodies, whose function was to assist the Commission. Subsequently all the executives were abolished with the exception of the London Transport Executive; and the functions of the executives were transferred to the Commission.

The Conservative Government from 1951 restored most road haulage services to private enterprise and, under the Transport Act, 1962, transferred the functions of the British Transport Commission to four statutory boards (to manage British Railways, London Transport, Docks, and Waterways) and a Holding Company.

Air transport is, with minor exceptions, a State monopoly, and is organised by two corporations: British European Airways and British Overseas Airways. The B.O.A.C., in its original shape, was set up in 1939, and took over in 1940 the State-supported Imperial Airways and British Airways. In 1949 the British South American Airways Corporation was merged into the B.O.A.C., under the Airways Incorporation Act. All routes in the Commonwealth, and any other routes not within the sphere of B.E.A., are operated by B.O.A.C. To safeguard the position for the corporations, the Minister of Aviation (formerly Transport and Civil Aviation) is empowered to enforce rules for the registration of British and foreign airways services using British airports. Such rules must, however, be within the framework of international agreements which have been given statutory basis.

Cable and Wireless Limited, which operates the transmission system of cable and wireless messages, was brought into public ownership in 1947. The functions of the Board include rate-fixing policy, co-ordination of telecommunications within the Commonwealth, research, negotiations with foreign interests, and arrangements for organising telecommunications so far as the defence of the Commonwealth is concerned. A radio and television service is operated by the British Broadcasting Corporation, and a separate television authority is provided for in the Television Act, 1954, under which a measure of commercial broadcasting was made possible in 1955.

Oceanic shipping, as distinct from canal and river transport, is not nationalised, but the Government has played a part in shaping policy, *e.g.* in 1960, when substantial Government aid was offered to the Cunard Company to build a new fast luxury liner to uphold British prestige by an addition to

their Atlantic fleet. The Government has also been active in regulating conditions of work, rates of pay, and supply of seamen. The Merchant Navy reserve pool is financed by the Government, and the National Maritime Board, representing ship-owners and men, which has accepted the principles of continuous employment and basic wage rates, is in constant touch with Government Departments.

### **The Public Corporation**

A feature of nationalisation has been the development of the public corporation. This is an organisation set up under statute and given the responsibility, within very wide limits, of running a particular industry or service. There are many different types of such organisation, each designed to serve the special end in view. But there are certain problems, not entirely resolved, which are common to all these organisations.

A public corporation, as the name implies, acts on behalf of the public and is designed to meet a national need. This raises the question of responsibility to Parliament, which is the creator of the corporation. The Minister with whom the industry or service is associated normally appoints the members of the Central Board responsible for policy and management. But there is no close Government supervision. Opportunity is from time to time given for debating the work of particular corporations, and the Ministers concerned are expected to explain their activities. But day-to-day questioning is not feasible. Nevertheless, Ministry control grows, and the power of a Minister to issue "general directions" is a development since 1945. To give Parliament an opportunity of making constructive suggestions to public corporations, and to give the corporations an opportunity of making suggestions needing Parliamentary approval, the Government set up in 1953 a Select Committee on Nationalised Industries.

A further problem is that of accountancy. Nationalised industries are expected to pay their own way. The normal requirement is that loans shall not be raised to pay current expenses. The large sum raised in 1950 by the British Electricity Authority was for capital expenditure. It seems reasonable, therefore, to leave financial management largely to the

public corporation. But loans have Government backing, and it was not surprising to find some Conservative backbenchers opposing the increase in the National Coal Board's borrowing powers, authorised in the Coal Industry Act, 1956. Accounts are not examined by the Comptroller and Auditor-General. This may be right, but the published accounts of public corporations are not in sufficient detail for M.P.s to offer useful comments. There seems to be room for reform in a system in which monopoly rights are granted and in which there is a theoretical accountability to the nation.

The needs of consumers, as such, require to be considered when private enterprise is eliminated. Efforts have been made in this direction by the creation of such bodies as the Transport Users' Consultative Committee for England and Wales, and the Consultative Councils which work in conjunction with Electricity Area Boards. But there is room for further experiment, perhaps for a Ministry of Consumers' Welfare.

The problem of staffing is difficult. The public corporations have their own methods of recruitment and their own salary scales, mostly inherited from the days of private enterprise. It has been argued that since the State is, in effect, the employing body, there should be some general pattern of employment conditions in Government Departments and nationalised industries. Top-ranking civil servants have complained that they receive much lower salaries than the chief administrative officers in public corporations.

Finally, there is the question of control within the corporations themselves. One object of nationalisation, the prevention of overlapping, was to be achieved through central planning. But major industries cannot be administered satisfactorily from the centre. The National Coal Board was given very wide powers by law, but it was found expedient to set up area boards and delegate authority to them. When electricity was nationalised area boards received by law the status of public corporations; and area gas boards were constituted from the outset as primary manufacturing authorities. There is far more centralisation than in the days of private enterprise, but the practice of decentralisation has allowed for local



initiative, accompanied unfortunately in some cases by local extravagance in the use of public money.

A public corporation may be described as a half-way house between direct Government control, using Civil Service methods; and private business, developing techniques to secure maximum profits. Although a few public corporations were known early in the twentieth century, their problems were comparatively simple. Many adjustments are needed to ensure the smooth working of the public corporation as developed since the Second World War. Criticisms by the Select Committee on Nationalised Industries (a permanent Parliamentary feature since 1957) have emphasised this need.

### **Research and Inventions**

A Scientific Advisory Committee to co-ordinate defence research and civil research was created during the Second World War. In 1947 this Committee was replaced by two bodies: an Advisory Council on Scientific Policy to advise the Lord President of the Council, who had become the Minister responsible for formulating and executing Government scientific policy; and a Defence Research Policy Committee "to advise the Minister of Defence and Chiefs of Staff on matters connected with the formulation of scientific policy in the defence field." In 1959 a Minister for Science was first appointed to assist in co-ordinating and developing scientific projects, and from the following year the office was held in conjunction with that of Lord President of the Council. The Minister is responsible to Parliament for the Department of Scientific and Industrial Research, the Medical Research Council, the Agricultural Research Council, the Nature Conservancy, and the Overseas Research Council—which are all supervised by committees of the Privy Council. Other Ministers remain responsible for scientific work within their own departments (*e.g.* the nuclear weapons and aircraft development carried out by the Ministry of Aviation). The Minister for Science, however, is broadly responsible for civil scientific policy, including atomic energy and space research. He is advised by the Advisory Council on Scientific Policy, whose

members, appointed by him, include leading scientists from the universities, industry, and Government service.

The Department of Scientific and Industrial Research, staffed by Civil Service scientists, operates fourteen national research stations, including the National Physical Laboratory, the National Chemical Laboratory, and the Road Research Laboratory. At the beginning of the Second World War the annual expenditure of D.S.I.R. amounted to £500,000—in 1963-4 it is expected to be £18,600,000.

The National Research and Development Corporation, set up in 1948, is designed to make the best use of inventions and discoveries made by inventors in whatever capacity they may be working. Before the setting up of the corporation, it was usual for inventors who had secured Government safeguards for their processes to approach commercial firms with a view to "exploiting" their inventions. Often the inventions were bought up and put in the "ice-box." Where inventions might have been likely to check or destroy existing markets in profitable commodities, they were bought up to prevent their being commercialised at all. Under legislation dealing with the setting up of the National Research and Development Corporation, it is possible for scientists and inventors to have their processes considered by a non-profit-making body, and it is the duty of the corporation to see that the fullest possible use is made of every discovery that can be developed in the national interest. Where a scientist does not wish to make a "corner" in his discoveries, the corporation can safeguard the national position and prevent "piracy" by foreign firms. These have in the past often seized upon unpatented processes, secured patents themselves, and then compelled British users of processes discovered by British scientists, to pay royalties for their use, as for instance in the case of penicillin.

### **Banking and Currency**

The Bank of England Act, which came into force on 1st March 1946, provided for public ownership of the principal bank in the country. Founded in the reign of William III and Mary, this bank was meant to be an institution

independent of Government control though possessing statutory privileges of joint stock banking, which put it in a unique position. In the nineteenth century, the right to establish joint stock banks was extended, but the start which the Bank of England received in the seventeenth and eighteenth centuries secured a special position for it in the country's financial system long before it was nationalised.

For many years before 1946 the dividend declared by the Bank of England was exactly the same. In effect, the shareholders held gilt-edged stock. For most practical purposes the Bank of England was a Government Bank. It acted in a two-fold capacity: as banker for all Government Departments; and as a Reserve Bank, controlling the credit policy of commercial banks which cater for the needs of industry, commerce, and the professions. Under the new dispensation, the functions of the Bank remain much the same, and, as was emphasised in 1958 during investigation of the Bank's affairs, the Directors are mostly City business men as formerly.

As before 1946, the Bank has a monopoly of note issue, registers Government stock and pays interest on it, deals with the Consolidated Fund, holds funds for the commercial banks, and handles payment agreements with foreign countries.

The issue of token currency, copper and silver, is the monopoly of the Royal Mint, which originated in feudal times. But the importance of the Royal Mint has steadily declined in modern times. The total volume of money has vastly expanded since industry was mechanised, but this has been mainly through bank credit and note issue; and it is not therefore surprising that Parliament should have been concerned, from the seventeenth century onwards, with limitations of note issue, and should have been anxious to subject the banking system of the country to Government control.

The nationalisation of the Bank of England was, however, little more than a gesture. The Bank's intimate relations with the Treasury, and its Government business, had for many years put it outside the realm of ordinary private enterprise for all important practical purposes. Nationalisation was little more than a formal recognition of a *fait accompli*.

Prior to the Second World War it was possible for citizens of the United Kingdom to purchase foreign securities with comparative ease. Many well-to-do people had their financial eggs in many countries, and could feel confident that the collapse of a monetary system in any one country, or even a group of countries, would not leave them without substantial wealth. During the war, the Treasury was empowered by legislation to secure information of all foreign holdings, and citizens were obliged in certain cases to allow the Government to sell their securities and replace them by Government stock. The purchase of foreign securities was no longer allowed freely during the war period. Owing to the danger that the "flight of capital" might endanger the safety of the country, exchange control continued after the war, but the Exchange Control Act, 1947, relaxed the restrictions and allowed for the purchase of foreign securities, provided that a corresponding value in other foreign securities arose from a contemporary sale. Previously, any sale of foreign securities involved handing over the proceeds to the Treasury, which reimbursed the seller in sterling. By the Exchange Control Act, the right of the Treasury to compel holders of foreign securities to sell them was formally abandoned. Foreign purchasers of British securities must, however, secure Treasury permission if the object is to secure control of or buy out British companies. In 1960 Fords of Detroit obtained Treasury permission to buy out Fords of Dagenham.

### **External and Internal Trade**

Closely linked with the Government's control of exchange in foreign currencies and securities, is the control exercised over foreign trade. The era of free trade virtually ended with the First World War. The imposition of duties on imports, in 1915, which were associated with the name of McKenna, at that time Chancellor of the Exchequer, undermined the free trade position. The Import Duties Act of 1932 committed the country to a policy of protection, which was designed to safeguard the market for British industries and adjust the balance of payments.

After the Second World War the tariff system was retained, but the Government used other devices in addition to imposing duties. Import and export licences were necessary for the sale and purchase of goods—the object being to reduce imports to a minimum and to make exports as high as possible. The difficult position of the U.K. in the post-war world, which made the system of licences necessary, was largely the result of extensive selling of foreign securities during the Second World War and of the creation of large sterling balances in other countries. The pre-war gap between the value of exports and imports could be met to a large extent by financial services rendered by the City to foreign traders and by interest payments on investments abroad, but after 1945 the interest payments still available were counter-balanced by payments to countries with sterling balances. American and Commonwealth loans were used to maintain the British standard of living during the early period of post-war reconstruction, and the European Recovery Programme, agreed to by the U.S.A., and popularly known as “Marshall Aid,” helped to save the situation from 1948 onwards. But this help had its political aspect. Britain was required to play a part in general European recovery, and Government policy in adjusting tariffs and preferences was influenced by the political alignment with the U.S.A. against the expansionism of the U.S.S.R.

Government Departments, which had done bulk-buying during the Second World War, continued to make extensive purchases in world markets, and this also had its political aspect. For instance, the Ministry of Food entered into contracts with foreign and Commonwealth traders, sometimes taking the whole of a country's exportable surplus and agreeing to pay guaranteed prices over periods of years. Purchases, while primarily aiming at economic equilibrium and well-being, had to be made inside the framework of a general policy initiated by the Cabinet, and this involved questions of security, plenty, and price.

Inside the country, the Government Departments were among the major wholesale agencies in the U.K. Again, political as well as economic factors influenced the result.

Many commodities were bought by Government agencies and resold to retailers at far below the purchase price. In some cases the price to the consumer was below the price paid to the producer. Subsidies on imported and home-produced food amounted, in the years immediately after the Second World War, to more than £400,000,000 per annum.

A corollary of this policy was the fixing of maximum wholesale and retail prices for many commodities produced and sold through the medium of private enterprise. Percentages on material costs were fixed for manufacturing different types of goods, but were subject to variation by the Central Price Committee of the Board of Trade. Inspectors, acting for the Board of Trade, were given large powers in enforcing maximum retail prices, Local Price Regulation Committees being empowered to consider alleged infringements of Government orders, and prosecutions following if the committees thought a *prima facie* case existed. Government regulations also affected the setting up of retail businesses. A licence was necessary to deal in many kinds of goods.

After 1950, Government regulation was considerably, though not entirely, relaxed. Rationing was gradually reduced until it was abolished in 1954, a major exception being made in the case of coal where rationing went on until 1958. Price regulation was lessened, and prices came to be determined to a much greater degree than in the immediate post-war period, by the play of competitive forces.

The reappearance of freer private enterprise underlined the importance of checking monopolies and this problem was touched in the Restrictive Practices Bill, 1956. In 1958 the Restrictive Practices Court declared certain restrictive practices to be against the public interest. Many similar decisions have been given since.

## CHAPTER XVI

### THE UNITED KINGDOM

#### **The British Isles**

The phrase "British Isles" is now little more than a geographical term. Before 1920, however, the British Isles constituted a reasonably well-integrated political unit. The Empire and Commonwealth could, in those days, be regarded as divided into three main parts: the Colonies and Protectorates, the Dominions, and the British Isles. But when the Irish Free State received official recognition the position changed. Dominion status was conferred on Southern Ireland, which, under the name of Eire, came to have many of the characteristics of a republic, and which in 1949 became the Irish Republic outside the Commonwealth. The title of the United Kingdom came to be The United Kingdom of Great Britain and Northern Ireland, instead of The United Kingdom of Great Britain and Ireland, which had been created by the Act of Union in 1800. On such high matters as peace and war, the monetary system, defence provision, and representation abroad, the United Kingdom has a common policy, determined by the Parliament at Westminster.

But there are many differences in the structure and functions of government organisation, concerned with less fundamental issues. England and Wales are, in major respects, alike. Although a fairly strong nationalist movement exists in the country, Wales possesses few marks of political independence. Scotland, however, has many characteristics of her former independence. These are seen in the relations between Church and State, in the educational system, in local government, and in the courts of law. Northern Ireland is still further removed from England in its political structure. A separate Parliament, democratically elected, deals with a wide variety of subjects. Finally, in the Channel Isles and

the Isle of Man the tradition of independence is alive in law-making machinery, which deals with finance as well as the more provincial subjects of education and public health.

### **England and Wales**

The close union between England and Wales goes back to the conquests by Edward I. Because of the long association, the institutions of the two countries have much in common despite the persistence of the Welsh language. Wales was incorporated into England in 1536, and a statute of 1547 declared that in future Acts the name "England" should be deemed to include Wales. Nevertheless, a few concessions to Welsh nationalism exist inside the framework of a highly unified system. Within the Ministry of Education there is a separate Welsh Department, and the inspectorate is distinct from the English inspectorate. The Ministry of Agriculture, Fisheries and Food is similarly provided with a distinct Welsh Department. There is also a Welsh Board of Health. In the House of Commons there is a Welsh Grand Committee. On issues specially affecting Wales, Welsh M.P.s can be relied upon to stand solidly together and to act vigorously. Although the demand of the Welsh Nationalists for a separate Secretary of State for Wales has not yet been met, since 1951 a Cabinet Minister (at first the Home Secretary, and later the Minister of Housing and Local Government) has added the duties of Minister for Welsh Affairs to the duties of his main office. Since 1957 he has been assisted by a Minister of State for Welsh Affairs.

Relations between Church and State are radically different in England and Wales. The Welsh Disestablishment Act was the first Act to be passed in accordance with the terms of the Parliament Act of 1911. After being twice rejected by the House of Lords, the Bill passed the House of Commons for the third time in 1914. The outbreak of the First World War delayed its enforcement, but in 1920 the provisions of the Act were carried into effect. The Anglican Church in Wales ceased to have any special connection with the State, many endowments were devoted to other purposes, and the Welsh



bishops lost their seats in the House of Lords. Formerly, the bishoprics in Wales were within the province of the Archbishop of Canterbury, but the Act provided for a new form of organisation. The leading bishop of the Welsh Church is Archbishop of Wales. By disestablishment of the Church in Wales, the strong Calvinist element in the country received recognition, and the movement for independence in other spheres lost a good deal of its force. The revival of Welsh nationalism has, in more recent times, been based on political rather than religious foundations.

### **The Union With Scotland**

The links between England and Scotland were forged in the seventeenth and eighteenth centuries. James VI of Scotland became James I of England in 1603. But no organic union between the two countries occurred until 1707, unless we count the short-lived attempt at union in Cromwell's time. The disappearance of the Scottish Parliament by a self-denying ordinance occurred in the reign of Queen Anne. Two identical Bills were passed through the English and Scottish Parliaments, and, as a result, Scotland receives representation in the House of Commons, and peers of Scotland elect representatives to the House of Lords for every new Parliament. The position at present is that seventy-one M.P.s are elected in Scotland, roughly half of that number from the country areas and the other half from the burgh areas. University representation was abolished by the Representation of the People Act, 1948, in the same way as in England and Wales, and Northern Ireland. Inside Parliament there is a Scottish Grand Committee and Scottish Standing Committee to give special consideration to Bills and other matters relating especially to Scotland. This has gone some way towards meeting the demands of the Scottish national movement, but extreme nationalists wish to see a Parliament for Scotland, though most would be willing to accept the overlordship of the Parliament at Westminster in regard to foreign policy, war and peace, tariff policy, and other matters on which any real unity depends.

The Scottish Convention, founded in the period between the two World Wars, launched the National Covenant in 1949. Nearly 1,000,000 people signed the document, which pledged them "in all loyalty to the Crown and within the framework of the United Kingdom" to do everything in their power "to secure for Scotland a Parliament with adequate legislative authority in Scottish affairs."

### **The Scottish Department**

A Secretaryship for Scotland was established in 1707, but this was abolished after the "Forty-five" rebellion. From 1782 to 1885 no special provision was made for Scotland's administration. The Secretary of State for the Home Department took most Scottish affairs in his stride; the rest were dealt with by the Privy Council, the Treasury, and the Local Government Board. A Secretary for Scotland was appointed in 1885, and he took over most of the duties of the Home Secretary and the rest. In 1926 the Secretary was raised in status to be one of His Majesty's Principal Secretaries of State. He has Cabinet rank, which ensures special consideration for Scottish affairs. In 1951 a Minister of State for Scotland was appointed to assist the Secretary.

In 1928 further reorganisation took place, and all the Scottish departments were placed under the Secretary of State. The Scottish Department of Health was created to replace the Board of Health which had been set up in the latter part of the nineteenth century. This department deals with much the same subjects as the Ministry of Health. There is also a Department of Agriculture and Fisheries, an Education Department, and a Home Department. The headquarters of all these offices are in Edinburgh.

To advise the Secretary of State for Scotland, the Scottish Council was formed in 1946 by amalgamating the Scottish Development Council and the Scottish Council on Industry. The Scottish Council is concerned with problems of manpower for industry and the development of industry. Bodies dealing with an important aspect of Scottish life are the North of Scotland Hydro-Electric Board and the South of Scotland

Electricity Board, which are independent of the electricity authorities for England and Wales. The Scottish Area Board under the National Coal Board is a largely autonomous body. In general, Scotland has the opportunity of shaping its economic and social policy within a framework of uniform principles laid down by the Parliament at Westminster.

### The Church

The Act of Union with Scotland, in 1707, provided for the retention of the Scottish ecclesiastical system. The Church of Scotland is Presbyterian and is governed by Kirk Sessions, Presbyteries, Synods, and the General Assembly. During the eighteenth century, the Church of Scotland became stagnant, partly as a result of lay patronage and the waning of the power of ecclesiastical courts. In 1842 a movement for reform was led by Dr. Chalmers. An attempt was made to give congregations a veto on the nominees of lay patrons, but the legal battle was won by the champions of the old order. The reformers seceded and founded a new Church, nearly five hundred ministers leaving the Church of Scotland during the *Disruption*. The Free Church was poor but enthusiastic. In many places there were soon two churches, almost side by side, one nearly empty but sustained by former benefactions, the other full and supported by the offerings of the congregation. In 1874 the Patronage Act removed many of the abuses of the old system, but the Free Church was well rooted by then. Gradually, however, a *rapprochement* took place. Co-operation was substituted for competition in the spiritual field. In 1929 the General Assemblies of the Church of Scotland and of the United Free Church effected an organic union between the two organisations. This union was made possible by the Church of Scotland Act, 1921, which made legal articles of the constitution of the Church of Scotland whereby amalgamation with other Churches was provided for. The question of endowments was dealt with by the Church of Scotland (Property and Endowments) Act, 1925. A union with the Free Church was thus safeguarded financially before the union actually took place.

### **The Legal System in Scotland**

In 1707 the Act of Union provided for the retention by Scotland of its legal system. This differed markedly from the English system, mainly because of the influence of Roman Law, which had deeply permeated the legal system of Scotland before England was seriously affected. Land law, for instance, is different in Scotland and England. Marriage law is radically different: as soon as young people reach marriageable age, they cannot be prevented from marrying by parents or guardians. Juries return a majority verdict; and the verdict may be "Not Proven," which, though it gives an accused person his freedom, indicates the absence of absolutely convincing evidence. The decision at the Old Bailey in 1960 in favour of Penguin Books Ltd and *Lady Chatterley's Lover* did not apply to Scotland, where the law of obscenity was different, but no action was taken against distribution in Scotland. Whether the book would have been declared obscene in a Scottish court remains problematical.

The head of the judicial system is the Lord Advocate of Scotland. Like the Attorney-General in England, he is appointed for party reasons, though he must be a legal expert. The duties of the Lord Advocate are, however, wider than those of the Attorney-General. Before the creation of a Secretary for Scotland, in 1885, the Lord Advocate acted as agent for the Home Secretary in regard to his Scottish duties. More recently, the duties of the Lord Advocate have been reduced, but much patronage remains in his hands, and he is responsible for drafting Government Bills for Scotland. His main duties are, however, judicial. The highest judge in Scotland is the Lord President, who is the head of the Inner House of the Court of Session. The final court of appeal, in civil (but not criminal) cases, is the House of Lords, which is the judicial link between England and Scotland.

### **Scottish Local Government**

Local government in Scotland developed along unique lines. As in England, many *ad hoc* bodies were set up in the nineteenth century, but the foundations of local government

were very different, and the result was not at all like the English system. The Local Government (Scotland) Act, 1929, which was parallel to the Local Government Act of the same year for England, helped to give some uniformity to the organisation of local government in both countries.

The local authorities in Scotland are the county councils, with similar powers to those in England and Wales; the burgh councils; and the district councils.

Burgh councils are classified as Royal, Parliamentary, and Police. Royal Burghs owe their status to royal charters and are roughly the same as county boroughs in England, but, unless a city has full county status (*e.g.* Glasgow and Edinburgh), it is in part dependent on the county council in whose area it is situated. Parliamentary Burghs were created in 1832 with the right of sending M.P.s to Westminster. Their status in local government is similar to that of Royal Burghs. Police Burghs are towns with 700 inhabitants or more and were created as such under the Burgh Police (Scotland) Act, 1892. In general, they are like non-county boroughs and urban district councils in England. The town councils of burghs elect members to serve on county councils along with councillors who hold office as a result of direct popular election. Burgh councils consist of provost, bailies, and councillors, corresponding to mayor, aldermen, and councillors in England. Local government officials are similar in both countries.

District Councils were established in 1929, in place of the District Committees nominated by County Councils. These Councils, popularly elected, correspond roughly to Rural District Councils in England and Wales, but they are not rating authorities.

In education there is nothing corresponding to the English system, in which the Church has come to be so important in the provision of schools. In 1918 nine tenths of the schools in Scotland were provided by local authorities. Roman Catholic and Episcopalian schools qualify for public grants of money when transferred to L.E.A.s, under an Act passed in 1918. The teachers have to be approved, in regard to religious belief and character, by the Church concerned. In

other respects control by the L.E.A. is similar to control exercised in other schools.

Co-ordination is effected by the Secretary of State for Scotland, who is *ipso facto* head of all the Scottish departments which exercise powers over local authorities in their appropriate spheres.

### **The Irish Problem**

The relations between England and Ireland have rarely been unclouded. Periodical invasions by English troops occurred for centuries before the conquest made by Mountjoy in the reign of Queen Elizabeth. The subjugation by Cromwell put Ireland firmly under the heel of England, and the subordination of the Irish was confirmed by the campaigns of William III, which were followed by the Treaty of Limerick. During the eighteenth century the Irish gradually improved their position and secured a semblance of legislative independence in 1782, when England's fortunes were at a low ebb in the New World. But in 1800 the Irish Parliament voted for its own extinction, after bribery had been used on a sufficient scale.

The Act of Union, passed by the British and Irish Parliaments, came into force in 1801. Irish representation was provided for in Lords and Commons, and the citizens of both countries were given equal rights. The disestablishment of the Irish Church in 1869 was the main constitutional change effected before 1914, but the movement for self-government grew in intensity during the nineteenth century, largely through the efforts of O'Connell and Parnell, two able Irish patriots. Home Rule was proposed in 1886 and 1893, but Gladstone just failed to carry these projects into effect. After he had gone, the support for Home Rule declined in England. It was not until 1912 that a Home Rule Bill was successful in the House of Commons and lay dormant until the two-year veto of the Lords was no longer effective. But the outbreak of war delayed the execution of the Act, and Home Rule, as proposed by the Commons in 1912, proved unacceptable to the Irish after the First World War had ended.

The Home Rule plan of 1914 contemplated the setting up of an Irish Parliament for the whole of Ireland, but with control of foreign policy and other matters of common concern reserved for the Parliament at Westminster. The people of Northern Ireland were opposed to this plan from the start, and were quite unwilling to be brought under the control of a Government dominated by Irish Catholics. The extremists, on the other side, were dissatisfied with the limits proposed to the functions of the new Irish Government. The politicians in Sinn Féin ("Ourselves Alone") asked for complete independence and the setting up of an Irish Republic. In the general election of 1918, Sinn Féiners secured practically every seat except those of the Protestant north, though many of the seats were secured by a narrow majority only.

In 1920 a new Government of Ireland Act provided for separate governments in the North and the South, with tentative arrangements for an ultimate union between the two. Each area was to have its own Parliament, its own judicature, and its own executive. So far as the Act related to Northern Ireland, it was carried into effect, but the other parts of Ireland were not prepared to accept this compromise. Eventually a solution was reached in 1921 between the Sinn Féiners and the British Government. The South was to form a Free State, in a position analogous to a Dominion, with complete powers of self-government except in regard to matters such as foreign policy and defence, which all Dominions at that time left within the province of the British Government. The Free State, later called Eire, developed further characteristics of independent status, while Northern Ireland continued to cling to the British connection as a safeguard against absorption by Eire. With the passing of the Republic of Ireland Act in 1949, Eire underlined her independent status which was recognised by the U.K. Parliament in the same year. This was accompanied by increasing clamour for the end of partition.

### **Northern Ireland**

Northern Ireland includes the Parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry, and

Tyrone, and the boroughs of Londonderry and Belfast. The Northern Irish Parliament includes a House of Commons, with about fifty elected members, and a Senate of about half that number, two of whom are *ex-officio* and the rest elected by the Commons on a system of Proportional Representation. Because the British Government imposes and collects taxes and carries out certain "reserved" services, Northern Ireland sends twelve members to the Parliament at Westminster. Executive power is vested in the Governor, who is nominated by the British Government, but he must accept the advice of his Cabinet, which represents the majority party in the popular legislative chamber. The Governor acts on behalf of the Crown, and is in the position of a constitutional ruler, there being a system of responsible self-government in Northern Ireland. In addition to the Prime Minister, there are Ministers for finance, home affairs, labour, education, agriculture, commerce, and health and local government. Procedure is similar to that in England, and officers of Parliament include a Speaker of the House of Commons, a Serjeant-at-Arms, and a Black Rod, who is Deputy Serjeant-at-Arms.

Although the British Government imposes the bulk of taxation, the balance, after deducting the cost of reserved services, goes to the Northern Ireland Exchequer, and is used in accordance with the policy of the Northern Irish Government. County Councils and County Borough Councils are similar to their counterparts in England and Wales. But Rural District Councils are sanitary authorities for all Urban Districts within their area. County Councils are rating authorities, and Districts "precept" upon them. Poor Law Unions and Boards of Guardians, though abolished in England in 1929, continued in Northern Ireland, but a National Assistance Board was later set up.

### **Channel Islands and Isle of Man**

These territories are not colonies, but dependent territories within the British Isles. As in the case of Northern Ireland, the channel of communication with the British Government is the Home Secretary. Acts of Parliament do not apply to



the islands unless they are specially mentioned. Lieutenant-Governors in Jersey, Guernsey, and the Isle of Man are appointed by the Crown. Alderney and Sark are dependencies of Guernsey.

The Isle of Man, which was acquired from the Duke of Atholl in the eighteenth and nineteenth centuries, has a Parliament of its own, known as the Tynwald, which is Norse in origin. There are two Houses. The Upper House consists of the Governor and Legislative Council, consisting of Island officials; the Lower House is known as the House of Keys, and is popularly elected. The Isle of Man derives most of its income for government purposes from customs duties, which have in the past yielded a handsome surplus, from which the island has made substantial contributions to the British Exchequer. A point of interest about the Isle of Man and the Channel Islands is that income tax is at a much lower rate than in the United Kingdom.

Jersey and Guernsey have Parliaments of a similar type, known as "Estates." They have been linked with England, save for brief periods (*e.g.* German occupation, 1940-44), ever since the Norman Conquest. The islanders claim that, as they were part of the Duchy of Normandy, they helped to conquer England and are the true nucleus of the British Empire. Bailiffs, one each for Jersey and Guernsey, are appointed by the Queen to preside over the Estates, and also over the Royal Court or judicial body.

## CHAPTER XVII

### THE NATIONS OF THE COMMONWEALTH

#### **Commonwealth and Empire**

The overseas expansion of Britain, which led to the creation of a British Empire, began in the seventeenth century. Some preparatory work was done under the Tudors and a specific claim was made to Newfoundland, but colonial development of a permanent kind took shape in the reign of James I. From that time onwards, Britain could substantiate claims to overseas territories, and the British Empire came into being. The word "Empire" was, however, a courtesy description. Although the King had many subjects overseas, he continued to use the established royal title. No King has claimed to be Emperor, except in India, where the Imperial title was adopted by Queen Victoria in 1877 and relinquished by George VI in 1947. Nevertheless, the word "Empire" was for a long time an appropriate word to describe the heterogeneous territories that were bound together in common allegiance to the Crown. Parliament legislated for the whole, although there were subordinate legislatures in many areas; and administrators were dependent on the Crown. Trade regulations were devised in the interest of the mother country, and of the dependencies, but whatever the motives of policy, the decisions in major items were not taken locally. Governing bodies in the dependencies were expected to submit to central control. In return they secured the protection of the British Navy and the privileges of British citizenship.

During the nineteenth century the relations between the British Government and the outlying areas were gradually changed. The organisation became less of an Empire and more of a Commonwealth. In Canada, an experiment was tried in responsible self-government, the people of the united provinces of Ontario and Quebec receiving the right to manage their own internal affairs. Ministers became responsible

to the Canadian legislature and were changed when the Opposition secured a majority. With the adoption of this principle in New Zealand and in the Australian states, the grip of the central authority at Westminster was considerably relaxed.

In South Africa, a grant of responsible self-government was made to the Union in 1910. But power rested in the hands of the white population, who excluded the natives from any real participation in political life. Self-governing institutions developed vigorously only among settlers of European origin.

Even so, the management of foreign policy, and in particular the decision to make war, was the responsibility of the Government in London. Up to a point the Dominions might be consulted beforehand, but there was no necessity to consult them, nor could they do more than make suggestions. Decisive action was wholly within the competence of H.M. Government at home. But the First World War led to a change in this matter. The Dominions were brought into the war as dependencies; they emerged as virtually independent units. In future they could not be committed to war save with their express sanction. Their new status was recognised by other Powers when they were admitted to the League of Nations in 1919.

Self-government came more slowly in other parts of the Commonwealth, and for the most part the word "Empire" remained a satisfactory name for the territories where full responsible self-government was not yet applied. But it is almost impossible to say where and when colonial status was abandoned and Dominion status acquired. A classic case is that of Southern Rhodesia, which was emancipated in 1923 and had a legislature linked with a responsible executive in the same way as at Westminster. But control of foreign policy remained officially outside the scope of the Government of Southern Rhodesia. This position was, however, such that it was felt unfair to subordinate Southern Rhodesia to the Colonial Office, and the affairs of Southern Rhodesia were therefore brought within the province of the Dominions (later Commonwealth Relations) Office; and representatives of Southern Rhodesia consulted with other representatives in

Imperial Conferences, where relations with foreign Powers were important topics.

Among the areas subject to the Colonial Office there were, and are, innumerable shades of difference in status, the general tendency being towards greater autonomy. Because of the differences in status between the various peoples who comprise the whole, the phrase "Commonwealth and Empire" has much to recommend it. The word "Empire" harks back to the older conception of relationship with the mother country, which is to some degree perpetuated in the colonies and protectorates; the word "Commonwealth" refers to the new conception of equal status, which is in process of being realised. Since 1949, when India became the first Republic within the Commonwealth, the term "Dominions" (which is clearly inappropriate for Republics) has increasingly been superseded by the term "Members of the Commonwealth," which also includes the United Kingdom itself.

### Legislation

According to Dicey's exposition of the legal theory of Parliamentary sovereignty, the Parliament of the United Kingdom was supreme wherever the Crown commanded the allegiance of the people. But this theory no longer agrees with the facts, and must be abandoned. The theory was being gradually undermined even when Dicey wrote his *Law of the Constitution*, in the latter part of the nineteenth century. But at that time the facts were sufficiently in line with the theory to provide general support for it. The position after the First World War made the theory untenable, and subsequent developments have made it absurd.

The Colonial Laws Validity Act, 1865, laid it down that Acts of the Imperial Parliament not specifically applying to the Dominions should not be enforced there. According to Dicey's theory, this Act could have been repealed and more rigid control established from Westminster. It is possible that for a few years such a move was practicable and could have been enforced. But it would certainly have created a great outburst of opposition. After the First World War, and probably for a few years prior to that event, any attempt to

put the clock back would have led to the secession of some of the Dominions. From 1918 onwards, the concessions given in the Colonial Laws Validity Act were not enough to keep the Commonwealth together. Canada and the Union of South Africa, and possibly other Dominions, would not have stayed inside the Commonwealth under conditions of complete subordination in foreign policy. The Parliament at Westminster could not have sanctioned treaties binding the Dominions without their consent. These were the plain facts of the situation.

Under such circumstances it was the merest pretence to maintain the legal theory of Parliamentary sovereignty throughout the Commonwealth. The theory had real substance as applied to colonies, protectorates, and mandated territories. It had no substance at all as applied to the territories whose representatives sat in the councils of the League of Nations. The way for the official abandonment of the theory was prepared at the Imperial Conference of 1926, when it was asserted that the United Kingdom and the Dominions were "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth." This pronouncement, for which the nimble brain of Lord Balfour was largely responsible, gave satisfaction to Canadian and South African opinion, and to some extent satisfied the Irish as well. But a rider was added that "the principles of equality and similarity, appropriate to status, do not universally extend to function. . . ." The Statute of Westminster, 1931, was an acknowledgment by the Parliament of the United Kingdom that the equality of status was accepted by the rank and file of M.P.s. The "right" of the U.K. Parliament to legislate for the Dominions was abandoned, and there is no likelihood of its resurrection.

There are, however, legislative matters which cannot be disposed of simply by assertions of equality of status. Over a long period, Acts of Parliament provided for the structural framework of Dominion government. It is one thing to

legislate about, say, education; quite another to determine the relations between central and provincial governments in a federally organised unit. The constitution of Canada was framed at Westminster, and there was no procedure for altering the constitution except by Act of Parliament. In 1949 the Canadian federal legislature was granted constituent powers in respect of powers allocated to the federal legislature under the British North America Act, but the other sections of the Act remained in force, pending agreement in Canada on the form of a new constitution. In Australia, much can be done by special procedure to change the constitution. But Australians might well object to using the machinery intended to modify certain parts of the constitution, if the same machinery could be used to modify any part of it whatever. Such problems can only be solved *ambulando*. Questions of interpretation of the constitution may be dealt with by the Judicial Committee of the Privy Council, if the appropriate Dominion authorities are agreeable, and this procedure is still valuable. The Parliament at Westminster would certainly not, on its own, presume to make any further changes, whatever the verdicts of the Judicial Committee might be, but Acts passed long before 1931 still cast their shadows in the Dominions.

In regard to other legislative issues, the position of the Dominions was satisfactorily resolved. The Governor-General, who was formerly the nominee of the British Government, could, and did, "reserve" Bills; and some of these were refused by the Crown on the advice of Ministers of the Home Government. But the Governor-General became the nominee of the Dominion Government, and "reservation" became obsolete. Rights of extra-territorial legislation were expressly conferred in 1931 on Canada, South Africa, and Eire (then the Irish Free State). With regard to the Colonial Laws Validity Act, 1865, the Statute of Westminster declared that Acts of the Imperial Parliament, except those defining the constitutions of the Dominions, might be amended or repealed by Dominion legislatures. Australia and New Zealand did not adopt, until 1942 and 1947 respectively, Sections 2-6 of the Statute of Westminster, 1931, which were

concerned, *inter alia*, with extra-territoriality and the Colonial Laws Validity Act, 1865.

In brief, the Dominions came to have supreme legislative power, and did not need to come to London so long as they could settle their legislative problems on their own. They could, if they wished, abandon their allegiance to the Crown, cut themselves off from any appeal to the Queen via the Judicial Committee of the Privy Council, and secede from the Commonwealth. Since 1949 most of the Commonwealth members have, in fact, abolished appeals to the Judicial Committee; several have become Republics, acknowledging the Queen as "Head of the Commonwealth" (as do all Commonwealth members), but not as Sovereign; and two (the Irish Republic in 1949 and South Africa in 1961) have seceded from the Commonwealth.

### **Foreign Policy and Defence**

Until the twentieth century it was generally accepted by the Dominions that foreign policy was a matter for the U.K. Government. In the reign of Queen Victoria, Gavan Duffy, who clamoured for the right of colonies to make treaties with foreign powers and to make their own decisions about peace and war, had only a small following. The position did not change radically until after the death of Queen Victoria. But the demand for a share in foreign policy emerged clearly at the Imperial Conference in 1911. The Foreign Secretary painted a gloomy picture of an impending struggle in Europe, and Dominion representatives gave solid support to British policy. But there were strong statements made about the need for consulting the Dominions in any moves contemplated by the U.K. It was plain that some, at any rate, of the Dominion spokesmen were affronted by the alliances with Japan, France, and Russia; not because they were actively disliked in themselves, but because the British Government carried the negotiations through without a word to the Dominion Governments. In commercial matters, the Dominion of Canada in particular had waged a tariff war with Germany, while Britain was still a free-trade country. If external commercial policy could be handled by the Canadian Government,

it was a short step to claims in the political field. The claims heard in 1911 were a warning which the British Government did not ignore. The official position was unaltered down to 1914; but Dominion representatives were in fact taken into the confidence of the British Government. The principle implicit in this consultation was made explicit in 1919, when the Dominions were brought into the Peace Conference and were acknowledged as "Sovereign States." Each signed peace treaties separately. The marks of the old subordination in foreign policy were erased, though the Commonwealth was preserved. Henceforth the Commonwealth might act as a unit, but only with the express consent of each Dominion.

In the Second World War there was no automatic entry of the Dominions into a state of war after Britain's declaration against Germany. Each Dominion that fought with the United Kingdom determined the time when it was at war, but Australia and New Zealand accepted the view that the King's declaration involved them immediately, and they gave statutory effect to this view.

Nevertheless, as the Declaration accepted at the Imperial Conference (1926) put it: "The principles of equality and similarity, appropriate to status, do not universally extend to function. . . . In the sphere of defence the major share of responsibility rests, and must continue to rest, with His Majesty's Government in Great Britain." This was a plain hint that Dominions should use their equality of status with proper circumspection. If they were likely to need help and could only contribute in a small way to the common system of defence, it would be wise to pay heed to the point of view of the British Government and avoid a parochial outlook on world affairs. It was also implied that Dominions should contribute something substantial to their own defence or they could hardly expect much of a hearing in the councils of the Commonwealth. Long before 1926 the Dominions had begun to organise some defence forces. There were militia systems for local protection, and naval squadrons for the policing of local waters. But the Dominions were under no



specific obligations to provide armed forces for the whole Commonwealth.

The Imperial Defence Conference in 1929 dealt with the task of organising defence forces on common lines, and some useful work in this connection was done by the Imperial General Staff and by the Committee of Imperial Defence. The experience of the First World War indicated a readiness to help in time of crisis, but the post-war feeling was against a rigid organisation for the forces of the Commonwealth. The word "Imperial," as applied both to the Staff and the Committee, became largely nominal. During the Second World War, the part played by the Dominions varied very substantially. South Africa came into the war on a very small majority vote in the legislature, and many conditions were attached to the employment of her troops in the war. They were, for example, confined to the defence of territory in Africa.

Canadians, Australians, and New Zealanders were not hampered in the same way, although even here their commanders in the field were responsible directly to their home governments. They were organised differently from each other, and all had different systems of remuneration. In spite of difficulties, however, co-ordination was possible, and the part played by Dominion forces on land, on sea, and in the air, contributed substantially to victory. After 1945 the Dominions went their own ways again, and the Committee of Imperial Defence became simply the Committee of Defence. It was left to the U.S.A., seeking security in the Atlantic and the Pacific, in 1948-49 to inaugurate defence schemes in which the Commonwealth countries would take roles appropriate to the areas in which they were primarily interested.

### **Machinery for Co-operation**

As the Dominions grew to manhood, some acceptable method of consultation had to be devised for the British and Dominion Governments. One important method was for the Dominions to appoint representatives to safeguard their interests and to negotiate with the British Government. All overseas member-countries are now represented in London

by High Commissioners, and many have such representatives in other Commonwealth capitals. The High Commissioners and their staffs are concerned with political issues at a high level, and correspond in many ways to the Ambassadors of foreign countries. In addition, the individual Australian States, Canadian Provinces, and Nigerian Regions maintain Agents-General in London, with mainly commercial duties.

Periodical consultation between the Commonwealth countries at the highest level has come about through the system of Conferences. The first "Colonial Conference" met in 1887 and was summoned in this particular year because of the Jubilee celebrations. Queen Victoria was just completing fifty years of her reign. Ideas of Imperial Federation were in the air; and many contemporary statesmen were hopeful of framing a constitution for the whole Empire. But, though a good deal of enthusiasm was generated, there was no agreement on details of organisation. A second conference, in 1897, had useful results, but federation was fading out of practical politics. Edward VII's coronation provided an opportunity for another conference, and it was then decided that a meeting every four years would be advisable.

In 1907 it was decided to change the title "Colonial Conference" to "Imperial Conference." A permanent secretariat (provided by the Colonial Office) was established, and provision was made for subsidiary conferences, such as the Imperial Defence Conference held in 1909. In 1917 the Prime Ministers of the Dominions attended special meetings of the "Imperial War Cabinet," which, though only consultative in character, had an important bearing on the policy of the British "War Cabinet" which had the responsibility for the conduct of the war. As in the 1880's, there was some hope that a federal organisation would be created for the Empire, but the project was still-born. The Conference of 1926 wrote the epitaph on Imperial Federation. As Mackenzie King, the Canadian Premier, said in 1937, the conferences existed not to decide policy, but to consider co-ordination of policies while reserving individual rights of decision. In 1944 the title "Imperial Conference" was abandoned and the phrase "Commonwealth Prime Ministers'

Meeting" came into use. In line with this was the changed title of the Dominions Secretary of State. In 1947 he became Secretary of State for Commonwealth Relations.

A variety of useful organisations have been created at various times to deal with special problems of Commonwealth co-operation. As a result of discussions at the Imperial Conference of 1923, an Imperial Economic Committee was set up on which all Dominions were represented except Canada. The object was to secure information on Empire products and marketing opportunities. An offshoot of this activity was the creation of the Empire Marketing Board, which was aimed at getting other countries to "buy British." But the Board was only feebly supported by the Dominions, and was dissolved after a few years.

A more important development was seen in 1932 when the Ottawa Economic Conference met and devised plans to encourage inter-Imperial trade. The stimulus to Empire trade was considerable, though it disappointed its most optimistic supporters. The Canadian Government helped, in 1935, to undermine the Ottawa agreements by making an agreement with the U.S.A. which cut right across the Ottawa arrangements. Shortly afterwards, India and Australia cut adrift from Ottawa. The hopes of maintaining the Ottawa agreements were dead by 1937. After the Second World War, a few pieces of co-ordinating machinery remained, and some new ones were developed, but for the most part economic relations between Commonwealth members were those of separate individual States, securing, however, a large measure of agreement through frequent conferences. Fears have, however, been expressed about the possible economic effects on the Commonwealth of Britain's entry into the European Common Market.

### **Canada and Newfoundland**

Canada has a federal constitution based on the British North America Act, 1867. The result of the American Civil War, which had ended in a victory for the North, appeared to the British Government to threaten the position of the Canadian Provinces. The Monroe doctrine (1823) had

already opposed foreign intervention on the American continent against governments whose position had been acknowledged by the U.S.A. A powerful U.S.A. might be expected to extend the Monroe doctrine and adopt an expansionist policy. In that case the Canadian Provinces could easily fall, singly or together, into the American Union. It was urgent that something should be done to erase the main grievances of Quebec, whose inhabitants had been bitterly disappointed in the loss of their provincial rights in 1841.

The Federation of 1867 was an attempt to deal with the problem. Four Provinces were persuaded to join the new organisation, which was to be responsible for such matters as currency and tariffs. The Provinces were allotted certain specific functions, and provincial Parliaments were set up. Quebec, which is distinctive in having the only provincial bicameral legislature, insisted that no changes should be made except by the Imperial Parliament, although it was agreed that residuary powers (*i.e.* powers not specifically allotted to the central and provincial governments) should go to the federal authority. In this, as in the arrangement for altering the constitution, the arrangements made diverged from the model of the U.S.A. Another difference was that Canada had a Cabinet system similar to that in England. In other respects, however, there was much similarity with the U.S.A. In particular, the Federal Parliament consisted, as it still does, of a House of Commons, and of a Senate representing the Provinces. But, whereas the U.S. Senate provides for two members from each State, the Canadian Senate, which is nominated, has Provincial representatives proportional in number to the size and importance of the Provinces.

Canada has been one of the most active Dominions in pursuing its own interests in its own way. One of the last important occasions on which the internal affairs of Canada were the subject of an important decision by any Commonwealth organisation was in 1926, when the Canadian Government took the lead in reducing the position of the Governor-General to that of nominal adviser. Mackenzie King, the Canadian Premier, advised Lord Byng, the Governor-General, to dissolve Parliament. Byng refused, taking

the line that, as the King's representative, he had the right to refuse a dissolution just as the King had the right to refuse a dissolution in the United Kingdom. But the dead-lock that ensued forced his hand, and the rule was then established that Governors-General should act on the advice of the Governments of the day. In 1938 a Bill was introduced in the Canadian Parliament to abolish all appeals to the Judicial Committee of the Privy Council. This led to a case before the Judicial Committee to determine whether this Bill would be valid if it passed the Federal Parliament. The decision was that the Statute of Westminster, 1931, implied the right of a Dominion to sovereign status, and therefore to the privilege of reducing appeals to the Committee as far as desired. In 1949 Canada did, in fact, put an end to all appeals to the Judicial Committee. Some U.K. legislation is, however, still applied in Canada, because Canada has not completed the task of framing a constitution, as, for example, India has done.

Newfoundland, the "oldest colony," acquired Dominion status in the twentieth century. But the country was small, thinly populated, and subject to severe strain in times of world economic depression. Failure to meet her financial obligations occurred in the slump of 1929-33. The Newfoundland Parliament volunteered to surrender Dominion status, and the government was put into "commission." After a period of rigid economy, the question arose of reinstating Newfoundland as a Dominion. No action was taken during the Second World War, but in 1948 two plebiscites were held. By a narrow majority, the people of Newfoundland decided in favour of joining the Canadian Federation, thereby becoming the tenth Province.

### **Australia**

The Commonwealth of Australia originated from an Act of Parliament which came into force in 1901. Parkes, who became Prime Minister of New South Wales in the mid-nineteenth century, advocated a union of the Australian States and proclaimed a policy of "Australia for the Australians." Fear that Chinese and Kanaka labourers might flood the continent took a grip of the colonists, but the impetus to

federation was not quite strong enough to carry the scheme through. Parkes went out of public life with his schemes apparently a failure. But, in the 1890's, Federation Leagues revived, and a convention was summoned to discuss the question of a constitution for the whole country. There was strong opposition to union in Queensland, where Kanaka labour was considered essential. Western Australia was also isolationist. In consequence, there were numerous delays, but in 1900 a strong delegation was sent from Australia to Britain. The delegation received a warm welcome. Australians had taken part against the Boxers in China, and were active on the British side in the Boer War. The British Government was in a mood to meet Australian requests, and agreed to a loose form of federation for the whole country—New Zealand remaining outside despite attempts to include her.

The division of powers was such that the Federal Government was allotted a minimum of necessary authority, while the States were left with residuary powers. There was, however, provision that, where concurrent powers existed, the Federal rules should have precedence. United States influence was seen in the creation of a House of Representatives and a Senate on the American model. The Senate, for example, had equal representation from each of the States, and wide powers were conferred on this second chamber.

Relations with the mother country reflected the growing independence of the Australian States. From the 1850's onwards, the various States had been allowed responsible self-government. Western Australia obtained a full Cabinet system in 1890, and was the last State to acquire this mature status. The Federal Government was organised on the same lines as the States, the executive being responsible to the legislature. But the power of the British Government was by no means negligible. On the advice of the Government in London, the King appointed the Governor-General for the Dominion and the Governors for the various States. The Governor-General was expected to see that no legislative or executive action was taken detrimental to British interests. But these powers were used sparingly and are now obsolete:

from the start the Australian Parliament and the Australian High Court were largely independent. Amendment of the constitution, however, required the support of a majority of the electors in a majority of the States.

The High Court was, for many cases, an alternative court of appeal to the Judicial Committee of the Privy Council. Unless the High Court grants permission, appeal from its verdict is not usually possible. Only in a very difficult situation is the verdict of the Judicial Committee sought. Situations of this kind arise more particularly over disputes about written rigid constitutions. A good example of such a dispute arose in 1949 as a result of an adverse verdict, in the Australian High Court, on the Federal Parliament's Bank Nationalisation Act. An amendment to the constitution was likely to fail because of political opposition in three of the States; and the Federal Government sought a favourable verdict within the framework of the existing constitution, but the Judicial Committee pronounced against the Federal Government, leaving the banks under private enterprise.

### **New Zealand**

Australia and New Zealand have often acted in unison, but New Zealand is in all respects a separate country.

British rule in New Zealand dates back to 1841, when, by letters patent, the Government created a colony separate from New South Wales. In the 1850's New Zealand acquired responsible self-government, and later in the century was invited to join the Australian Federation. The invitation was, however, not accepted. In 1907 the country became known as the Dominion of New Zealand, but no change was made in the constitution, which rested on the Act of 1852 by which a legislature was set up to include a House of Representatives and a Legislative Council. The Legislative Council was a nominated body. Until 1891, the appointments were for life; after that time, for seven years only. But the hope that the experience of the members would provide a valuable factor in legislation was not realised. The Legislative Council was abolished in 1950, the Act taking effect on 1st January 1951. Legislative power rests with the elected assembly, where

Maori representatives sit side by side with representatives of European extraction. Women have been entitled to vote since 1893, and to be members of the House of Representatives since 1919. Relations with the British Government have normally been cordial. The Governor-General officially represents the Crown, but there have been no clashes about appointments as, for example, in Australia. There has been a gradual transition to the position where the Governor-General holds a position of dignity without interfering in the affairs of New Zealand. The convention is established that the Governor-General, who is also Commander-in-Chief, shall act in the same constitutional position as the Queen in Britain.

## **India**

British interest in India originated in the seventeenth century, when the East India Company established trading stations on the coast. Territorial ambitions developed naturally out of the clash between commercial rivals. In the eighteenth century, Britain struck down her opponents, and great stretches of India came under the rule of "John Company." The British Government slowly acquired control over the Company's policy, and in 1858 the Company came to an end. A Secretary of State was appointed for India, and the Queen proclaimed the principle that the Government should administer the country in the interests of the Indian peoples. In 1861 a Legislative Council was set up to assist the Governor-General. Indians were nominated to this Council, and gave their advice. From these small beginnings, self-government gradually expanded, *via* the creation of rural and municipal councils, until the Councils Act of 1892 allowed for separate communal electoral rolls. The Indian Congress, which originated in 1885 with the approval of the British authorities, was an unofficial body expounding the aspirations of politically conscious Indians, and more particularly representative of Hindu opinion. Because, in the twentieth century, Congress was refused greater independence by the British Government, it became a "thorn in the flesh" to Viceroy.



Meanwhile, the Moslems, concerned about the Hindu leanings of Congress, created a Moslem League in 1908. In 1909 the Viceroy's Executive Council had a seat reserved for an Indian, central and provincial legislatures were enlarged, the elected members were increased in numbers, and the functions of the legislatures were widened. These changes, known as the Morley-Minto Reforms, did not go far enough. The Montagu Chelmsford Report of 1918 led to the Government of India Act, 1919, which aimed at giving Indians complete control of local bodies, an increased share in provincial government and a relaxation of British control at the centre, while nevertheless safeguarding the position of Britain in such essential matters as the maintenance of public order, currency, and finance. The provisions of the Act of 1919 hinged on (1) a distinction between Central and Provincial subjects, and (2) a distinction within the Provincial category between "reserved" and "transferred" subjects. The Governor-General in Council had full powers over reserved subjects, but was required not to intervene in transferred subjects, except in a crisis. Normally, transferred subjects (health, education, public works, agriculture, excise, weights and measures, etc.) were to be dealt with by Governors acting with Ministers responsible to the provincial legislatures.

So far, the reforms initiated by the British Government had left the Indian States out of account. A Royal Commission, under the chairmanship of Sir John Simon, was appointed in 1927 to review the working of the Government of India Act, 1919, and to make suggestions for effective co-ordination between the British provinces and the Indian States. Perhaps it was unfortunate that no Indians were members of the Commission. At any rate, Congress drew up a separate and very different plan for the solution of India's problems. This made it difficult to secure a good hearing for the Simon Report in India, though this Report (1930) recommended far-reaching changes in the direction of self-government for the Indian peoples.

The main recommendations of the Simon Commission were (1) the creation of a Federation in which the Legislative Assembly of 1919 should be replaced by a Federal Assembly,

and (2) the extension of self-governing functions to include everything except matters concerned with defence. An Act of Parliament (1935) gave statutory form to the ideas which the Simon Commission had formulated. The Federal Assembly was to consist of (1) a House of Assembly to represent the people in Provinces and States. A fairly wide franchise was granted in the Provinces so that millions of people were given voting rights. In the States, the Princes were left to determine the way their people should be represented; (2) a Council of State consisting of members elected by a small electorate of about 100,000 in the Provinces, together with members nominated by the Princes in the States. The Legislature was to deal with a wide variety of federal subjects, but in social matters (education, health, factory inspection, and the like) control was to remain in the hands of the Princes and the Provinces.

Unfortunately, few Princes agreed to the scheme, and the federal machinery was therefore never effective. In some of the provinces the elected bodies refused to work the scheme, and the Viceroy had to appoint Ministers to manage affairs. But some provinces were prepared to use the new machinery. The increased electorate was a real concession to democratic opinion. The new political organisation was therefore a success in some places. On balance, however, the Act of 1935 did little to satisfy Indian opinion. Congress leaders were bent on obtaining independence (*swaraj*), and the outbreak of war in 1939 gave them an opportunity to press their claims. In the dark days of 1942, Sir Stafford Cripps went on a goodwill mission to establish a union "which shall constitute a Dominion, in allegiance to the Crown but in no way subordinate in domestic or external affairs." The offer was to take effect after the war was over. Until peace came, control was to be retained by the British Government. Congress leader Gandhi asked for independence immediately, and rejected the British offer. Deadlock resulted.

Nevertheless a decision was reached in 1946 when Viscount Mountbatten of Burma produced a partition plan, which should take effect if a union of Moslem and Hindu territories proved unacceptable to the Moslem League.

Moslem leader Jinnah stood firmly against union, and partition was agreed to. The provinces were allotted by peaceful negotiations to India and Pakistan, while the Indian States, no longer subject to British paramountcy, were given the chance of joining India or Pakistan, or remaining independent. A Constituent Assembly for India met in December 1946, and a Constituent Assembly for Pakistan in August 1947. It was agreed that there should be no restrictions imposed on the work of these constituent bodies. By the Indian Independence Act, 1947, the responsibility of Britain for the government of India ceased on 15th August 1947. There was to be a trial period during which full Dominion status was granted to the two governments. After that, the decisions of the Constituent Assemblies were to become fully effective. Although the 1935 Federal Assembly never took shape, India and Pakistan used the proposals as a basis for the provisional assemblies set up in 1947. The Indian Assembly decided on a republican form of government with a liberal franchise, area voting, religious toleration, free education, liberty of the press, speedy trial, and other democratic features. The Republic consists of sixteen States, created out of the provinces and principalities, and a number of Union territories. The federal government includes a President, appointed by an Electoral College, a Council of States with indirectly elected members, and a House of the People with members elected on the basis of universal suffrage. In the States, governors are appointed by the central authority, and in the old princedoms the former rulers lose political power, but receive guaranteed incomes.

The difficult position likely to arise when India became a full republic led to a meeting of the principal Commonwealth Prime Ministers, in April 1949. A formula was then agreed upon. Though applying only to India, the declaration was plainly applicable to other Commonwealth countries (and has since been so applied), and may be regarded therefore as an historic statement on a level with the declaration in favour of equal status, made at the Conference of 1926. The Governments of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan, and Ceylon (the

then members of the Commonwealth) declared that their countries were "united as members of the British Commonwealth of Nations, and owe a common allegiance to the Crown, which is also the symbol of their free association." But they went on to say that "the Government of India has informed the other Governments of the Commonwealth of the intention of the Indian people that, under the constitution which is about to be adopted, India shall become a sovereign independent Republic. The Government of India has, however, declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations, and as such the Head of the Commonwealth. The Governments of the other countries of the Commonwealth, the basis of whose membership is not hereby changed, accept and recognise India's continuing membership in accordance with the terms of this declaration."

### **Pakistan**

When the Islamic Republic of Pakistan promulgated its constitution on 23rd March 1956, the people of the country were ready and happy to continue full membership of the Commonwealth as India had done. The Federation was declared to have a religious basis: both President and Vice-President of Pakistan had to be Moslems, and no law was to be enacted contrary to the Islamic faith. The two provinces, East Pakistan and West Pakistan, are widely separated from each other. Although East Pakistan has a bigger population than the western province, the capital is Karachi in the west. Under the constitution these provinces had provincial assemblies to deal with matters allocated to them. Both President and Vice-President were elected indirectly, and both the National and Provincial Assemblies participated in the election. The National Assembly was a single chamber legislature, with 310 members. The members were democratically elected, 155 from each province. The Cabinet system was in full operation, but the number of Ministers was rather less than in the United Kingdom, and the Prime Minister accepted

responsibility not only for over-all management of the country's affairs, but also for defence, frontier regions, States, education, and refugees and rehabilitation. In 1958, only a short time after the constitution of Pakistan had come into existence, the general situation deteriorated due to corruption and inefficiency, and the constitution was suspended. A military regime was established, pending the setting up of a constitution of a different kind. The Government announced that a Western-type constitution was unsuited to the Islamic Republic and that a body of fundamental rules would ultimately be promulgated in line with the traditions of the country.

### **Ceylon**

Ceylon was for many years a Crown Colony. In course of time the demand for self-government, which swept through British possessions in the Far East, led to the same sort of policy as was adopted in India. The people of Ceylon were gradually introduced to the art of self-government. In 1920 a constitution was given to the island, but this did not satisfy Sinhalese opinion. Further changes were made in 1931, both men and women being given the franchise, and elections to be on area, not on a communal, basis. The legislature was known as the State Council, most, though not all, members being elected. Committees of the legislature received administrative powers, and were normally able to decide policy sponsored by the Governor. But the Governor retained real powers, which he could and did occasionally exercise on behalf of the British Government.

The economic policy of the Ceylon legislature was felt at times to be inimical to British interests, and the Governor acted against the known policy of the Sinhalese. The Second World War, with its fierce impact on the British position in the Far East, led to the setting up of a Commission on Constitutional Reform in 1945. The outcome was the Government of Ceylon Act, which was passed in 1947 and conferred full Dominion status on Ceylon at a time when Burma, which had been separated from India under the Act of 1935, was preparing to proclaim complete independence. Ceylon has

universal suffrage, a Senate, and a House of Representatives, the latter wholly elected. The Cabinet system is on similar lines to the Cabinet system in England, except that British conventions of Cabinet government are embodied in the constitution. A decision to become a Republic within the Commonwealth was taken in 1956, but had not been implemented by 1962.

### **Malaya**

The Federation of Malaya consists of eleven States, created from the nine autonomous Malay States and the two former British settlements of Penang and Malacca. This became an independent country within the Commonwealth on 31st August 1957, following an agreement by Queen Elizabeth II and the rulers of the Malay States. The Federation of Malaya Independence Act (July 1957), provided for the incorporation of Penang and Malacca. Thus royal prerogative and statute played a joint part in the creation of this Commonwealth country, from which Singapore was for the present excluded. The Federation is a monarchy of an unusual type. The Head of State of Malaya is elected for five years only from among the Malay State rulers. He has the duty of appointing the members of the Cabinet from among the members of the two Houses of Parliament. He is required to choose as Prime Minister the person most likely to command the confidence of the House of Representatives, a body consisting of 104 members elected in single member constituencies. The Senate (the second chamber) has thirty-eight members, twenty-two from the States and sixteen nominated by the Head of the State. The functions of the central legislature include defence and foreign affairs, but there is a wide range of subjects on which the States have concurrent legislative power and many other subjects on which the States have exclusive authority. Although Malaya is fully independent, it has a defence agreement with Britain. In 1963 a wider federation, "Malaysia", was set up, including Malaya, Singapore, North Borneo, and Sarawak; but Singapore has since seceded.

## Ghana

The former Gold Coast Colony and the neighbouring areas of the Northern Territories and Ashanti have been united to form the unitary State of Ghana, which came into formal existence on 6th March 1957.

From 1957 until 1960 Ghana was governed in accordance with the constitution promulgated immediately before Ghana became independent. The system of government was of the same general type as in the United Kingdom, with executive power vested in the Queen (represented in Ghana by a Governor-General) and exercised in accordance with the constitutional conventions developed in Britain. On 1st July 1960, however, a new republican constitution for Ghana came into operation. It departs considerably from the British system, since the President, Dr Nkrumah, combines the powers hitherto exercised by the Governor-General and by the Prime Minister. Parliament consists of the President and one chamber only—the National Assembly—which has 104 members elected by universal suffrage for a maximum of five years. There are eight Regions, each with a House of Chiefs.

## Nigeria

On 1st October 1960, Nigeria became a fully self-governing country within the Commonwealth. Elizabeth II was accepted as Queen of Nigeria, and the transfer of power was made with remarkable smoothness, though many English officials resigned office, probably in fear of the long-term results of "black" domination. The Government of Nigeria continues federal, as it was before independence was declared. There is a General Assembly popularly-elected and a Senate which represents the Regions equally. The maximum duration of the Central Legislature is five years, as in the U.K. In each Region there is a bicameral assembly, with a House of Assembly and a House of Chiefs. In the north, there is male suffrage (a concession to anti-feminism), while in the East and West Regions there is universal suffrage. Functions appropriate to the Regions are allocated to them, but high matters of state are the province of the Federal authority.

with its cabinet system based on that prevailing in most other countries of the Commonwealth.

### **Other Commonwealth Members**

The latest former British dependencies to achieve independence within the Commonwealth are Cyprus, Sierra Leone, and Tanganyika (all in 1961), and Jamaica, Trinidad and Tobago, and Uganda (in 1962). (See Chapter XVIII.)

### **The Republics of Ireland and South Africa**

The relations between England and Ireland have been notoriously stormy. In the nineteenth century, Gladstone supported a movement for Irish Home Rule, but this scheme was defeated.

After the First World War, the Government of Ireland Act, 1920, provided for separate Parliaments in Northern Ireland and Southern Ireland. Northern Ireland accepted this provision, and its present system of government is based on this Act. But the southerners would not accept the provision made for them. Instead, the Sinn Feiners set up the "Irish Free State," which made an agreement with the British Government, the terms of which were defined in the Irish Free State (Agreement) Act of 1922. In accordance with this arrangement the Irish Free State was to have the status of a self-governing Dominion "in the community of nations known as the British Empire." The relations between Britain and the Irish Free State were declared to be similar to those between Britain and Canada. Arrangements were made for joint defence, including the provision of harbour facilities for the British fleet in the event of war, but these facilities were withdrawn by mutual agreement in 1937. A particularly difficult problem was to decide the boundaries of the Free State, and this was left over for the time being.

The Irish of the south agitated strongly for the incorporation of Northern Ireland, and became steadily more dissatisfied with the last vestiges of "dependence" which Dominion status implied. In 1937 a completely new constitution was created, the name "Eire" being used instead of "the Irish Free State." But allegiance to the Crown was maintained, in a measure at any rate, by the External Relations Act, under



which for certain purposes the King might act on behalf of Eire in foreign relations.

During the Second World War, Eire remained steadily neutral. In 1949 Eire (now the Irish Republic) was officially declared to have ceased to be a member of the Commonwealth. But provision was nevertheless made for Irish citizens to be treated as British subjects, and the Commonwealth Office, not the Foreign Office, continued to handle relations with the Republic.

The Act under which the Union (now Republic) of South Africa was created passed the Imperial Parliament in 1909. By this Act, the self-governing areas of the Cape, Natal, the Transvaal, and the Orange River Colony were combined in a Union by which the colonies became provinces—the title Orange Free State replacing Orange River Colony, while the other areas retained the same names.

At the time of the Union the Africans and mixed races (*e.g.* the Cape Coloureds) had certain limited rights of inclusion on the common electoral roll, but in the years following these rights were progressively removed by the European-controlled Governments, in which the Afrikaners (or Boers) predominated over the English-speaking South Africans. The Afrikaner National party Government which came into power in 1948 hastened the process of segregating the non-white South Africans politically and socially (the policy of *Apartheid*). This consciously-planned racial discrimination created tensions in the post-war Commonwealth, in which coloured peoples were in the great majority, and it was almost inevitable that the South African Government should feel compelled in 1961 to withdraw from the Commonwealth on establishing a republican constitution. Britain's relations with South Africa are now handled by the Foreign Office, although the British Ambassador continues to act as High Commissioner, administering the British-controlled South African Protectorates of Bechuanaland, Basutoland, and Swaziland.

### **The Commonwealth in Perspective**

The late Professor Sir Ernest Barker asserted that three ideas helped to bind the Commonwealth together: the idea

of the "liberty of every subject under the common law"; the idea of "the representative principle, growing ultimately into the principle of responsible government"; and the "idea of the trust," by which is meant the obligation of advanced peoples to put native interests first in dealing with people less advanced economically and politically. But these principles are by no means fully implemented. Settlers of British origin have ties with the "Old Country" and are ready to act on its behalf, but they often feel little real sympathy with the black and brown citizens of the Commonwealth as distinct from their sympathy for black and brown people in other countries. British settlers have never merged socially with native peoples.

Perhaps the most revealing feature of the Commonwealth is the concept of citizenship. By a gradual process, the status of a British subject has come to be determined by the decisions of the independent countries of the Commonwealth. British subjecthood derives historically from allegiance to the Crown. But as the powers of the Crown, exercised by Ministers in the United Kingdom, have become more nominal in the self-governing communities, the definition of local citizenship has come to vary from place to place within the Commonwealth. A citizen, going from the U.K. to a Dominion, or from one Dominion to another, might find himself without the full rights of citizenship in the new country. In 1946 the Canadian Citizenship Act, passed by the Parliament at Ottawa, provided that, while all Canadians were British subjects, and all British subjects from any part of the Commonwealth were British subjects in Canada, the latter were not automatically Canadian citizens. But Dominion citizens coming into the United Kingdom were treated as U.K. citizens. However, the British Nationality Act, 1948, allows for a double nationality. The principle that a Commonwealth citizen is automatically a citizen of the U.K. has been abandoned. Each Commonwealth country is capable of determining in its own way what constitutes local citizenship, but agrees to accept British subjects from other parts of the Commonwealth as possessing a common status distinct from the status of foreigners. To conciliate member countries where the word "British" is disliked, the phrase "Commonwealth citizen" has been approved.

The solidarity of the Commonwealth may be tested, from the end of the individual, by considering the advantages which British subjecthood or Commonwealth citizenship confers. Within the Commonwealth there are easier travelling facilities than foreigners enjoy, *e.g.* in regard to visas and reporting to the police; also transfer to posts of responsibility is easier than for foreigners. Commonwealth citizens have, in addition, the advantage in foreign countries of securing help from the diplomats and consular staffs of Commonwealth countries working in close co-operation.

The accession of Queen Elizabeth II provided a revealing illustration of the strength as well as the frailty of the Commonwealth bond. The Commonwealth countries hastened to welcome the new ruler, but they welcomed her in a variety of ways: in Canada as "Queen of Canada"; in India as "the new head of the Commonwealth"; and in the United Kingdom as "Queen of this Realm and her other Realms and Territories." Later on, the brief title "Head of the Commonwealth" was accepted by all the Commonwealth member countries, though they still used their individual designations.

## CHAPTER XVIII

### THE COLONIAL EMPIRE

#### **The Dependencies**

Much of the Empire was the outcome of commercial enterprise. Until comparatively recent times, companies were often granted political powers. The British South Africa Company, known as the Chartered Company, controlled Southern Rhodesia until 1923, when a form of self-government was granted. For many years the Imperial British East Africa Company was responsible for the administration of East African territories. The Royal Niger Company controlled, for a considerable period, territories in the Niger valley. The last chartered company to administer any area in the British Empire was the British North Borneo Company, which was the body responsible, under the Colonial Office, for the administration of North Borneo between 1888 and 1942. Together with the island of Labuan, North Borneo became the Crown Colony of North Borneo in 1946. Now company rule has disappeared, and the control of the British Government over dependent areas is exercised more directly through officials responsible to the Colonial Office.

A wide variety of government is to be found in the remaining British dependencies, from the territories which are on the verge of independence, to outposts like St. Helena and its dependency, since 1922, Ascension, which have no place for elected representatives at all. Between these extremes, there are very many kinds of representative institutions. In most cases the tendency has been in the direction of further self-government, but in a few cases it has been found necessary to retreat before making another forward step. This was the case with Malta, which received a form of responsible self-government in 1921. In this instance, vital matters, such as defence and finance, were excluded from the subjects within

the competence of the legislature. Otherwise, the Maltese Parliament was given wide powers, and the Governor was expected to act on the advice of responsible Ministers. The rise of Mussolini led to the encouragement of pro-Italian sympathies in Malta, and by 1930 the situation was so difficult that the constitution was suspended. In February 1939, representative government was restored to Malta, but war, 1939-45, delayed constitutional progress. In October 1947 a general election was held, and Cabinet government was in working order. In 1956 a referendum in Malta produced a majority of votes in favour of Maltese representation at Westminster, but a variety of difficulties made the hoped-for integration impossible. A new constitution, providing a greater degree of responsible government than under any of the previous constitutions, came into operation in 1962.

Besides Crown Colonies, there are Protectorates. In practice, the distinction between colony and protectorate has often come to mean very little. In a protectorate, the dominant Power is the ultimate ruler, with the local governing authority, as in Zanzibar, having competence in a restricted field. Kenya Protectorate is linked with Kenya Colony as a single unit. Similarly, before the reforms of 1947, the Colony and the Protectorate of Nigeria used to be grouped together under a Governor. Below the Governor, there was a Commissioner for the small area which constituted the Colony; and there were Chief Commissioners for each of the provinces which collectively made up the Protectorate. Another form of dependency was the trusteeship area, for which the trustee Power is responsible to the United Nations. Such areas were administered similarly to Crown Colonies, and the measure of self-government depended on the stage in political evolution reached by the people in the area. All the territories for which Britain assumed responsibility under the trusteeship system have now reached independent status.

### **The Empire in the Caribbean**

On the American mainland, British Guiana is governed as a Crown Colony. Until 1928 the area was governed by antiquated machinery devised in 1831. A Legislative Council

was set up in 1928, with provision for nominated and elected members. A more advanced form of government was established in 1935 and a still more advanced form in 1943. In 1953, a bi-cameral legislature was established, the popular house being based on universal suffrage. But this development was premature, trouble ensued, and there had to be a suspension of constitutional liberty. By 1961 British Guiana had resumed almost complete self-government.

British Honduras also has a Governor, an Executive Council, and a House of Representatives, and the elected members on the Council are in a majority. A full ministerial system was introduced in 1961.

In the Atlantic, the Bahamas and Bermuda (which has been settled since 1609) are each governed by a Governor, an Executive Council, a nominated Legislative Council, and a wholly-elected House of Assembly, members of which are in the majority on the Executive Council.

In the West Indies, two territories became independent in 1962—Jamaica, which had had internal self-government since 1959, and Trinidad and Tobago (administered as one unit), which had achieved the same status in 1961. Barbados, with a wholly-elected lower chamber and a Premier, is almost fully self-governing. Provision was made in 1961 for considerable constitutional advance in the Windward Islands and the Leeward Islands.

From 1958 to 1962 there was a federation of the British West Indies, including Jamaica, Barbados, Trinidad and Tobago, the Leeward Islands, and the Windward Islands. The federal legislature consisted of a Senate nominated by the Governor-General, and a House of Assembly representing the islands in the federation roughly in accordance with population. The Council of State, the federal executive, included the Governor-General, the Prime Minister, seven nominees of the Prime Minister, and three nominees of the Governor-General in Council. The Council of State mirrored the views of the House of Representatives in much the same way as the Cabinet mirrors those of the House of Commons in the U.K. The various islands in the federation retained most of the power exercised by them prior to the creation of the federation.

but matters of common interest were within the province of the federal authority, which was expected to advance gradually towards the ideal of an independent country within the Commonwealth. However, the withdrawal of Jamaica and Trinidad and Tobago from the federation led to its dissolution in 1962.

### **African Territories**

In West Africa a variety of methods have been used in government. Ashanti was under British protection in 1896, and was later administered by the Governor of the Gold Coast. The Gold Coast itself received a new constitution in 1951, the Legislative Council consisting almost entirely of elected Africans, and in 1957 independence was granted, the Gold Coast being renamed Ghana (see Chapter XVII). In 1953 the ministerial system was established in Sierra Leone; it became independent within the Commonwealth in 1961 (see Chapter XVII). In the Gambia, there was an unofficial majority in the Executive Council in 1954, universal suffrage was introduced in 1960, and a more advanced constitution in 1962.

Nigeria (Northern Region) has been the area of one of the most fruitful of modern experiments. Lord Lugard used here a method of government which has become famous under the name of "Indirect Rule." Finding the country distressed by poverty, he saw that a remedy might be applied without destroying all the political, social, and cultural organisation on which Nigerian society rested. He used Moslem Emirs to collect taxes and left them to administer much of what was collected; the Emirs were also, under general supervision, retained to administer justice by traditional methods.

In 1947 an improved constitution for Nigeria gave considerable power to Nigerians in the Western and Eastern Regions; and in 1951 a still more democratic constitution became effective. Each of the three Regions (west, east, and north) had a House of Assembly and a Regional Executive Council in which elected Nigerians predominated. A central legislature provided for popular representation, the House of

Representatives having chiefly elected members; and there was a Council of Ministers with Nigerians in the majority. But this half-way house to independence did not work well, and an improved Federal Constitution was set up in 1954. The constitution provided for a single-chamber House of Representatives, almost all of them elected: the Northern Region, Eastern Region, Western Region, Southern Cameroons, and Lagos returned members roughly in accordance with their population. There was a Cabinet responsible to the House of Representatives, but the Governor-General has reserve powers which he might use if the stability of the State was threatened. The principal duties of the central authority related to external relations, defence, police, customs, taxation, and most aspects of communications. The regional governments had specific powers allotted to them under the constitution, including education, agriculture, and local government. Even this constitution had a short life, however, and in 1960 Nigeria became independent within the Commonwealth (see Chapter XVII).

In South-East Africa, Southern Rhodesia virtually attained Dominion status in 1923. Northern Rhodesia, on the other hand, had a Legislative Council with only a minority of elected members. The Nyasaland Protectorate was governed as a Crown Colony, the Governor being assisted by an Executive Council and a nominated Legislative Council. In 1953 agreement was reached on a proposal to federate Southern Rhodesia, Northern Rhodesia, and Nyasaland. The Federal Assembly has considerable powers, and the Federal Government is the main channel of communication with the United Kingdom Government. The area constitutes a Customs Union, and more than half the Income Tax and Export Duties go to the Federal Government. Law and order are the concern of the separate units, but there is a Federal police force. Despite the economic advantages of federation, African people have come more and more to dislike it and its future seems uncertain. Meanwhile, major constitutional advances have been made in the individual territories.

Further north is Tanganyika, which became an independent member of the Commonwealth at the end of 1961. This,



like South-West Africa, was formally German, but whereas South-West Africa was handed over to the Union of South Africa, which virtually incorporated it in 1949, Tanganyika was handed over to Britain under mandate after the First World War, and later transferred to the Trusteeship Council of the United Nations. Neighbouring Uganda became independent within the Commonwealth in 1962. As early as 1893, Lord Lugard recommended that government should be through the Bantu chiefs. Here, the idea of "Indirect Rule" was first applied, and later it was developed more fully in Nigeria. In 1954 the Council of Ministers in Kenya was remodelled to include two Asians and one African, but difficulties with Mau Mau, lasting down to 1956, involved for some years a form of military occupation. It now has an African-controlled government and full independence is expected in 1963. Co-operation between Kenya, Uganda, and Tanganyika is secured through the East Africa High Commission, which comprises the governors of the three areas. The Commissioners, with the consent of the East Africa Legislative Assembly, can deal with matters of common concern, such as customs and excise, defence, and civil aviation.

The Sudan was, until 1953, under the joint control or *condominium* of Britain and Egypt. In practice, Britain was the dominant partner, but Egypt laid claim to the Sudan; in 1954 Sudan became independent, and the movement for amalgamation with Egypt later lost ground.

Off the coast of Africa, a number of islands are British dependencies. Mauritius has a legislature, with a majority of elected members and a ministerial system. St. Helena is under a Governor, assisted by an advisory council without any elected members. British Somaliland had a similar type of government until 1955, when provision was made for Legislative and Executive Councils. It secured independence as part of Somalia in 1960.

### **Mediterranean Problems**

Gibraltar, of importance as a naval station at the entrance of the Mediterranean, is a Crown Colony, with a Legislative

Council, partly elected. In the central Mediterranean, Malta has internal self-government, and, in the Eastern Mediterranean, Cyprus has been granted independence. The island was formally annexed in 1914, on the outbreak of war with Turkey. In 1925 it received a Legislative Council with a majority of elected members, but in 1931 the constitution was suspended following disturbances in the island. A movement for union with Greece led to high feeling and rioting, but, after that time, the position improved somewhat. Delay in returning to constitutional government after the Second World War was due to the fact that many Jews were held in Cyprus during the period of British control in Palestine when attempts were made to exceed the quota of Jewish immigrants to Palestine. After many vicissitudes, Cyprus was declared an independent republic with, however, British bases there. It became a member of the Commonwealth in 1961.

The Suez Canal was until 1956 managed by a Commission on which Britain was dominant. Although the British Government did not own quite half the Canal shares, it had a greater interest than any other Power; nevertheless it was decided in 1954 to withdraw troops from the Suez Canal Zone. But the seizure of the Suez Canal by Egypt in 1956 led to Anglo-French intervention, followed by U.N. "police" action.

Aden, though outside the Mediterranean area proper, is concerned with the maintenance of the trade route through the Red Sea and via the Suez Canal. Formerly connected with India, Aden was separated in 1937, and is a Crown Colony. An Executive and a Legislative Council were established in 1947, the latter now having an elected majority. The Governor has authority over both Protectorate and Colony.

### **The Empire in the Pacific**

With the grant of independence to Burma, and the partition of India, the importance of Malaya has been emphasised. After the Second World War there were ambitious schemes for the creation of a large Imperial unit in South-East Asia, of which the main constituent element would be the Malayan Union. This Union was created in 1946, and included the nine Malay States and the two British Settlements of Penang

and Malacca. The authority of the Sultans was curtailed, and the Union was subject to the overriding authority of a Governor-General with powers in Singapore, North Borneo, Sarawak, and Brunei, as well as in the Malayan Union.

The scheme proved unworkable, and in 1948 Britain made agreements with the rulers of the nine Malay States, restoring internal self-government. A Federation of Malaya was created to include the nine States and Penang and Malacca. Agreement was reached in 1956 to allow Malaya the status of an independent country within the Commonwealth (Chapter XVII). The State of Singapore, kingpin of Britain's defence position in the Pacific, gained full internal self-government in 1959; Britain continues to control its defence and external affairs. Sarawak, for many years a Protected State under a Rajah, became in 1946 a Crown Colony with a central Legislative Council (now with an elected majority) and local advisory councils. A federation of Malaya, Singapore, North Borneo, Brunei, and Sarawak is projected (see p. 291).

In other parts of the Pacific, Britain shares control with Australia and New Zealand. The Fiji Islands are directly under the Colonial Office, and have a Legislative Council where an advance towards full self-government was made in 1951, though executive power still remained in the hands of a Governor appointed by the Crown. The ex-German territories of New Guinea, the Bismarck Archipelago, and the North Solomon Islands came under Australian control, and were granted a Legislative Council in 1932. New Zealand, which controlled the ex-German Western Samoa, granted it independence in 1962. Ex-German Nauru, the guano island, is under the joint control of Britain, Australia, and New Zealand, but, in practice, the Australians have exercised the major influence. Britain exercises control, single-handed, over a number of scattered Pacific islands, including the Gilbert and Ellice Islands and the British Solomons. In the case of the New Hebrides, there is a condominium, the Powers concerned being France and Britain. Hong Kong, off the coast of China, remains a Crown Colony with an Executive Council and a Legislative Council.

### **The Crown in Council**

Legislation in the dependent parts of the Empire may be effected by one of three methods: by the Crown, by a local legislature, or by the Parliament of the United Kingdom. The legislative sovereignty of Parliament means that any ordinance issued by the Crown, or any law enacted by a colonial legislature is invalid if it conflicts with a statute which can be deemed to relate to the area in question. Subject to this proviso, however, the Crown has the right to legislate in Crown colonies within the limits of prerogative, or (as is more usual nowadays) within the limits of permission granted by specific Acts of Parliament.

The prerogative right of the Crown to legislate in areas acquired by conquest or cession was, and still is, considerable. The inhabitants of such areas have no rights against the Crown such as are enjoyed by citizens in the United Kingdom or by citizens in territories acquired by settlement. Settlers carry with them the rights they possess as U.K. citizens, but in ceded or conquered territories the Crown is free to legislate until Parliament establishes a colonial legislature. The special prerogative rights of the Crown then lapse, and the Crown may exercise only such prerogative rights as are exercisable in the U.K., or such rights as are specifically conferred by statute. In the case of areas acquired by settlement, the Crown may not, in the way it can in Crown colonies, legislate by prerogative, but the British Settlements Act, 1887, gives the Crown the right to establish laws, set up courts, and make necessary arrangements for the maintenance of order and justice.

In the instruments creating local legislatures, the right of the Crown to legislate is reserved, but in practice the right is only used to deal with a vital issue such as the grant of a new constitution, or to deal with matters of imperial rather than local interest, such as regulations for merchant shipping and air navigation. In the case of alleged miscarriages of justice, there is provision for petitions to the Queen, and for review of local judicial decisions by the Judicial Committee of the Privy Council. The procedure is, however, cumbersome, and there is room for simplification and improvement in appeal jurisdiction.

### **Trusteeship**

Under the Peace Treaties of 1919-22, some of the territories formerly belonging to Turkey and Germany were handed over to Britain and various Dominions, to be administered under mandates approved by the League of Nations. The Mandatory Powers were responsible for the sound government and proper development of the territory's natural resources. There were three classes of mandates. Under Class "A" came the ex-Turkish possessions, which were to be supervised until the time came for them to become completely independent. Iraq was, in fact, proclaimed independent in 1932, and became a member of the League of Nations, but treaty arrangements with Britain safeguarded British property and British citizens in the country. Palestine was also under an "A" mandate. Here difficulties in establishing a Jewish National Home prevented the speedy handing over of responsibility. Neither Jews nor Arabs were satisfied with the plans put forward by the British Government. But in 1948 the position had become so difficult that Britain handed Palestine over to the United Nations, which had succeeded the League of Nations as the international authority on behalf of which Britain had administered the country. The Jews promptly announced the creation of a State of Israel, which was, in time, acknowledged by the great Powers, though countries like India and Pakistan were averse from granting any recognition to a community which was so unpopular in Moslem circles.

Class "B" mandates involved the exercise of greater control by the Mandatory Power. It was felt that these areas (Tanganyika and Togoland, for example) were not nearly ripe for self-government, and required to be controlled in a different way. But indirect rule had already proved successful in neighbouring areas such as Uganda and Nigeria respectively; and the Mandatory Power was expected to allow substantial local self-government. Equal opportunities of trade were to be given to all members of the League of Nations, and, though this did not mean free trade, it meant that no discrimination could be made in favour of or against any League States. This condition was, in fact, observed.

After the Second World War, Britain agreed to accept new obligations to the Trusteeship Council of the United Nations Organisation, which was the successor body to the Permanent Mandates Commission of the League of Nations.

In regard to Class "C" mandates, a similar change took place, as far as Britain was concerned. Where there was joint control with Australia and New Zealand, the new authority of the Trusteeship Council was accepted; and these two Commonwealth countries agreed to U.N. supervision in respect of areas for which they had been responsible. The exceptional case was that of the Union of South Africa, which opposed the substitution of the new control for the old. Ex-German South-west Africa had been controlled, as had all "C" territories, as integral parts of the mandatory's possessions; and there had been some complaints about the Union's administration while the League of Nations was in existence. The new Trusteeship Council provided for a more onerous system of inspection, and might have been expected to be more difficult to please than the Mandates Commission. Moreover, the Union of South Africa Government had cherished the idea of ultimately annexing the territory. The idea of annexation was disavowed after the Second World War, but arrangements were made for representatives, elected on the same system as in the South African provinces, to become members of the Union Parliament. This meant annexation in fact, if not in name, the Union denying the Trusteeship Council any rights of supervision in the area.

### **Welfare and Development**

Social and economic progress in the colonies obviously depends on the sustained interest and help of the mother country. In many cases the territories are not big enough nor advanced enough to make rapid progress on their own, even though, in the words of the Royal Commission of 1938, "more and not less participation by the people in the work of government" is the principle of British policy.

During the Second World War the Colonial Development and Welfare Act of 1940 inaugurated a new phase of colonial policy. Grants made to the dependencies under the 1940

Act were modest, but the subsequent Colonial Development and Welfare Acts (1945 to 1959) provided a total of £315,000,000 for planned development and welfare in the dependencies over the period 1946-64.

In Africa, the British Government undertook an ambitious programme of development in Tanganyika and elsewhere, mainly with the object of growing ground-nuts on a large scale. For this purpose the Overseas Food Corporation, which was linked with the Ministry of Food but later under the Colonial Office, was formed to take over the United Africa Company, which assisted in launching the original scheme. The Colonial Development Corporation, with a borrowing capacity of £100,000,000, was created at the same time to stimulate enterprises designed to produce raw materials. These and other plans for developing the colonies were the fruits of the work of the Colonial and Economic Development Council, set up after the Second World War to advise the Secretary of State for the Colonies.

Unfortunately the haste with which the work of the Colonial Development Corporation proceeded was accompanied by a neglect of important factors. The difficulties were acknowledged in the Colonial Development Committee's Report for 1951. The total operating loss was shown to be over £1,000,000, as against just over £500,000 in 1950. The Report stated: "We have suffered in the past from inaccurate estimating, and incompetence, from rising costs and shortages of materials, and always, over the majority of the enterprises, there are the perils of the tropics, vagaries of wind and flood and drought, of ravage and disease."

Accordingly, the Corporation proposed to go more cautiously than in the past, and proceed on the "coat according to cloth" principle. Claiming that many valuable lessons had been learnt, the Committee asserted that Parliament, public, and staff could look forward with confidence in the Corporation, its purpose and work. Perhaps one of the lessons was that the Overseas Food Corporation was no longer useful. At any rate, it was dissolved in 1954 and its resources transferred to the Tanganyika Agricultural Corporation. More skilful handling of the affairs of the Colonial Development

Corporation in 1955 led to a small revenue surplus, but over £8,000,000 of former expenditure had to be written off to give the Corporation a chance of showing a respectable balance sheet in the future.

A plan for co-ordinating ideas about assistance to Africa was suggested in 1960 when Commonwealth Ministers initiated a Special Commonwealth African Assistance Plan (S.C.A.A.P.). The decision to go ahead with this was made at a meeting of the Commonwealth Economic Consultative Council. The purpose was defined as "to help further in meeting the very great need for assistance in raising the standards of life in the less-developed Commonwealth countries in Africa."



## CHAPTER XIX

### WORLD AFFAIRS

#### **National Sovereignty and International Law**

With the breakdown of feudalism, nationalism emerged as a major force in European affairs, more particularly at first in Britain, France, and Spain ; and beyond Europe the movement for national independence also acquired importance, especially in the New World. During the nineteenth century nationalism became for millions a cause to which they were prepared to devote their energy, and even their lives. The essential demand of nations was freedom from alien control. No matter how gracious the foreigner might be, his presence as a controlling factor in the community was bitterly resented.

In the twentieth century the stirring of nationalism affected the less civilised peoples of the world. Unfortunately, those people who had secured political independence were not always eager to respect or encourage the national aspirations of others. The old-established nations had become empire-builders after they had become politically united, and were reluctant to grant their subject peoples the rights they so fervently clung to for themselves. The newly established nations became empire-builders in their turn, and intense rivalry for possessions characterised international relations.

Under these conditions the need for a comprehensive international code, and for adequate international machinery to enforce it, became more and more pressing. From the time that the European States system came into existence, rules existed to provide for harmonious relations between Governments. These rules were the basis of modern International Law. Some theorists have claimed that customs and treaties, which are the two main sources of the international code, cannot properly be called "law," because they are not the expression of the will of an accepted world organisation, endowed by common consent with sovereign power. Such a

view is unsound. Law may be regarded as rules, applicable in the political field, which are generally obeyed, and which cannot be disregarded with impunity. On such a definition, much International Law is, in fact, more stringently applied than some of the laws issued in many national States. It is true, however, that there is no sovereign world legislature, and an examination of the whole field of law certainly indicates that national law is observed much more satisfactorily than International Law.

The major weakness of International Law is that, on the most vital issues, the great Powers are at times unwilling to accept the verdict of an international organisation. In a well-organised national State, the law least enforced is generally law concerning trivialities. In the United Kingdom, Government regulations are broken daily by thousands of people, who are either never found out or are punished very lightly. In the international sphere, minor rules of etiquette are usually observed with grave earnestness. But serious offences within a country are committed by very few people, and most of these are caught and severely punished. On the other hand, the breach of a treaty—a serious offence in International Law—may, under certain circumstances, be condoned by other great Powers. Such was the case with Italy, whose seizure of Abyssinia in 1936 received recognition by Britain and France in 1937. Nevertheless, such breaches of International Law are comparatively few. For every obligation disregarded there are hundreds scrupulously observed. Inadequate as International Law still remains, it is quite incorrect to describe it as the "law of the jungle." It constitutes in practice a real limit on the foreign policy of most of the nation States most of the time.

### **The League of Nations**

As the nation States rose to power in Europe the need for consultative machinery led to innumerable suggestions for a permanent organisation, representative of the principal Powers. In practice, little was accomplished until the nineteenth century. The French Revolution threatened the position of crowned heads in Europe, and was followed by the

formation of great coalitions to combat the danger. Napoleon, who claimed to be the true heir of the Revolution, was at last defeated by the efforts of peoples and governments in nearly all the countries of Europe. The desire to save Europe from a repetition of the disasters caused by the Napoleonic Wars brought the Concert of Europe into existence. Castlereagh, British representative in the making of peace, played a part in the Quadruple Alliance, which was continued after war was over.

But, as the likelihood of a spectacular recovery by France faded into the background, Castlereagh and his counterparts in other countries began to disagree among themselves, and the organisation which stood the strain of war would not stand the strain of peace. A vaguely worded document, which was the basis of the Holy Alliance, owed almost everything to Alexander I of Russia, who believed that rulers should be guided by Christian principles and should consider all differences between them in the light of the Bible. This, he hoped, would lead to harmony. Most other governments treated this project very lightly, though the Austrian Chancellor, Metternich, appealed occasionally to its principles when trying to persuade Alexander to follow a policy congenial to himself. The Holy Alliance was, in fact, of little importance in European history—nor were subsequent alliances much more fruitful in establishing permanent organisation for dealing with world affairs.

Much the most valuable experiment before the Second World War was the creation of the League of Nations. The covenant of the League formed an integral part of the Treaty of Versailles, 1919. The League had two main objects: the maintenance of peace, and the promotion of co-operation in the international sphere whereby the tensions that lead to war might be eliminated. The victorious Allies were all, apparently, prepared to join, but President Wilson of the U.S.A., who had done more than anyone else to launch the League, was defeated in his own country and the American Congress refused to join the League. Nevertheless, the League was an imposing organisation. Britain, France, Italy, and Japan were the leading members at the outset; and many

smaller nations joined either at the beginning or at a later stage. The British Dominions were accepted as member States, a fact which underlined their changed status in the Commonwealth.

The League of Nations had an Assembly, a Council, and a Secretariat. The constitution provided for power to be vested in the Assembly where, however, the rule that unanimity was necessary made it difficult on many occasions to secure a decision. The Council, consisting of permanent members, including the United Kingdom, and of a few non-permanent members chosen by the Assembly, was the executive organ of the Assembly. Much good work was done by various subsidiary organisations set up under the auspices of the League. But on major issues the Assembly failed to implement Article 10, which provided that "Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political dependence of all members of the League." China was not protected from Japan in 1932. A feeble attempt to impose "sanctions" on Italy proved to be no deterrent to the conquest of Abyssinia in 1936. The result was that efforts to restrain Germany were largely made outside the framework of the League of Nations altogether. The last and most ignominious failure of the League itself occurred over Finland, when the U.S.S.R. was expelled with the unanimous consent of all members of the League. The U.S.S.R. was not in any serious way hindered by the League's action. What is more, many of the nations which had so roundly condemned the U.S.S.R. in 1939 were eager to be her allies in 1941 when the Germans and Russians were at war, and it was the object of Western European governments, many of them in exile, to overthrow Germany. In view of the League's record, it was not surprising that it came to an end in 1945 and was replaced by a new "United Nations Organisation."

### **The United Nations**

Fifty nation States accepted the charter of the United Nations, in June 1945, at San Francisco. The Organisation was declared to be open to all "peace-loving" States, and

there was a general eagerness to join. The lead was taken by the U.S. Government. But there was no withdrawal from participation at the last moment, as in the case of the League of Nations. The Americans played a major part in launching the U.N., and were active in its proceedings. The other members of the "Big Five" were Britain, the U.S.S.R., France, and China. In practice, there were three leading Powers, since France was for a number of years crippled by unstable governments, and China was plunged into a civil war which ran strongly against the Nationalist Government. Differences soon appeared among the victorious Powers, and the U.N. became a sounding-board for expounding the views of each side. On the one hand were the U.S.A., Britain, and their many supporters; on the other hand, the U.S.S.R., steadily backed by neighbouring countries under her influence, such as Poland. The character of the United Nations changed with the rapid accession to independence of Asian and African countries, who are now in the majority. At the end of 1961, Tanganyika became the 104th member of the United Nations.

The principal organ of the United Nations is the Security Council. There are eleven members (five permanent and six non-permanent). Each member has one vote, and decisions require seven votes, including the votes of all the permanent members. Only on matters of procedure is the veto of the great Powers set aside. The great Powers are therefore parties to cases involving themselves, and it has been the usual practice of the U.S.S.R. to vote against resolutions involving Russia or her friendly neighbours. Without the veto the U.S.S.R. would not have joined the United Nations in the first place, and it is possible that the U.S.A. would not have done so either. Power is concentrated in the Security Council, and for that reason interest is sharply focused on its activities. Article 48 of the charter provides that "all members of the United Nations . . . undertake to make available to the Security Council . . . armed forces, assistance, and facilities . . . necessary for the purpose of maintaining international peace and security." The smaller nations were at first unwilling to accept this limitation on their foreign policy, since they might be called upon to assist in a war without

having had more than a small nominal part in making the decision in the Security Council. But the advantages of membership evidently outweighed the drawbacks, since applicants like the Argentine and Ceylon were willing to put up with many snubs from representatives of the U.S.S.R. and its satellites.

The General Assembly of the U.N. makes decisions by two-thirds majority and has power in regard to all matters except those involving security. But in this, the most important field, the Assembly can do no more than "recommend measures for the peaceful adjustment of any situation." The Economic and Social Council makes "studies and reports with respect to international, economic, social, cultural, educational, health, and related matters." It is also empowered to make recommendations for "the observance of human rights and fundamental freedoms for all." Apart from the Secretariat, the other important major organ of the U.N. is the Trusteeship Council. On this body are all permanent members of the Security Council and members elected by the Assembly, as well as every member which administers "trust" territories. The Trusteeship Council replaces the Mandates Commission of the League of Nations, and is concerned with the administration of ex-enemy territories.

Linked with the United Nations is the World Court, which is a new creation but is based, in all important respects, on the Statute of the Permanent Court of International Justice, set up in 1921. In turn, the Permanent Court owed much to the Hague convention of 1899, which was revised in 1907, and which provided for the creation of a Permanent Court of Arbitration. The Permanent Court of Arbitration did useful work, but it was entirely optional for member States to submit issues to it. In 1914 Austria refused to submit the dispute with Serbia. The Permanent Court set up in 1921 made provision for member States to bind themselves to submit disputes, provided the other party or parties were either bound or willing. In 1929 Britain accepted compulsory jurisdiction. The present World Court provides that in cases where agreements to submit disputes to the old Court were in force, these agreements are carried on to apply to

the new Court. Britain's obligation to submit a case to the World Court therefore stands as in 1929.

### **Regional Obligations**

The charter of the United Nations provides for the setting up of regional groupings and the creation of regional pacts, provided that these are designed to serve the purposes for which the U.N. stands. Owing to the sharp differences in outlook between the countries of Eastern Europe and the countries of the West, action has in fact been taken to organise countries in Western Europe for economic and political purposes. To assist in economic rehabilitation and make the best use of American help to Europe (popularly known as "Marshall Aid," from U.S. Secretary of State Marshall who was in office when the scheme was inaugurated), a body known as the Organisation for European Economic Co-operation was set up in 1947. The United Kingdom was an active member of this body and assisted in straightening out difficulties in the allocation of funds to help Western Europe on its feet. Questions were raised as to the compatibility of Britain's position in integrating her economy with Western Europe, and her position as the head of the British Commonwealth. To safeguard the position, consultation with Commonwealth governments was frequent and detailed. The result was harmonious co-operation in European affairs, culminating in membership of the Council of Europe in 1949, combined with the maintenance of good relations with Commonwealth countries.

A delicate situation arose when participation in European affairs opened the way for a close, defensive pact with some of the European countries. Obviously the United Kingdom could not commit the Commonwealth to obligations. But in practice any obligations undertaken by Britain are bound to affect Commonwealth relations. Substantial armed support for Europe might lessen the forces Britain could spare for overseas defence; and events in two wars had shown that the Commonwealth had felt impelled to give help on a generous scale in war-time, even though in 1914 and in 1939 Britain was not directly attacked but had herself declared

war on Germany both times. The possibility of loosening Commonwealth bonds was therefore a real one when Britain began negotiations for a firm defensive alliance with France, Belgium, Luxembourg, and the Netherlands. The opinion of Commonwealth countries was, however, carefully sounded, and the Brussels Treaty, the basis of an attempt to realise the ideal of "Western Union," came into force in 1948 with the full previous knowledge of Commonwealth statesmen. No insuperable objections were encountered, and a scheme was evolved from enlarging the scope of the alliance. Under the Atlantic Pact, 1949, the Brussels Treaty Powers agreed to co-operate with Norway, Denmark, Portugal, Iceland, and Italy (since joined by others) in joint defence schemes involving the participation of the U.S.A. and Canada. Each Power agreed to come to the help of any one of the signatories to the Pact, should an attack be launched against it. The Pact was not specifically directed against any Power or group of Powers, but it was obviously inspired by the growth of Russian influence in Europe, and was meant to provide defence measures in view of the possibility of attack.

### **Britain, Europe, and the World**

Arising out of the need for co-operation with democratically organised countries, the European Movement, which Winston Churchill did much to foster, led to the creation of a Council of Europe, which, however, involved no loss of sovereignty for its members. The Council consists of a Ministerial Committee comprising representatives of the participating Powers, and a Consultative Assembly representing the major political interests in the countries concerned. The inaugural meeting of the Council took place at Strasbourg in August 1949. There were ten European Powers as foundation members, other countries being invited to join later. The object of the Council is to consider matters of common interest, excluding defence and the allocation of U.S. aid to Europe. The Committee of Ministers meets in private, and the Assembly meets in public. Recommendations made to the Committee provide material for framing a common policy on subjects ranging from tariffs to human rights. For the United



Kingdom the main difficulty is to play a part as a good European while preserving good relations with members of the Commonwealth.

The problem of adjusting European duties and world commitments was seen in the negotiations which led to British agreement to participate in the European Payments Union. This Union, which was organised outside the framework of the Council of Europe, provided for the free transference of member countries' currencies through the Bank of International Settlements. Britain's agreement to co-operate came in 1950 when it was agreed that net creditors should hold in sterling amounts corresponding to their surplus with the whole sterling area, an area which involves almost the whole of the Commonwealth and some foreign countries besides.

Six European countries—France, West Germany, Italy, Belgium, the Netherlands, and Luxembourg—have taken the lead in the creation of supra-national European organisations, involving for their members the surrender of part of their national sovereignty. The Coal and Steel Community formed by the six Powers in 1952 (a European Defence Community agreed in the same year later proved abortive) was followed at the beginning of 1958 by a European Atomic Energy Community and a European Economic Community (the Common Market). Britain at first remained outside these bodies, but in 1961 the decision was taken to apply for membership of the Common Market. Britain had become, in 1960, a founder member of the much looser European Free Trade Area, comprising the "Outer Seven" (the U.K., Sweden, Norway, Denmark, Austria, Switzerland, and Portugal).

In the Pacific area, the setting up of A.N.Z.U.S., a defence group including Australia, New Zealand, and the U.S.A., caused misgivings in the U.K., but the situation was eased in 1954 when S.E.A.T.O. (the South-East Asia Treaty Organisation) came into being, including France, Thailand, Pakistan, and the U.K., as well as the A.N.Z.U.S. countries. In the Middle East, Britain was instrumental in bringing about CENTO (the Central Treaty Organisation, formerly known as the Baghdad Pact).

Experience gained by dealing with problems of this kind is an asset of great value in the field of international affairs. The United Kingdom and other members of the Commonwealth have the task of using their experience in assisting to preserve themselves by their own exertions, and of assisting in preserving world order by something more than their example.

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